

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

PLEASE RETURN TO
RECORDS ROOM

77-6164

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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ANNA SELMA VINJE MORPURGO,
Plaintiff-Appellant,

-vs.-

PROFESSIONAL STAFF CONGRESS/CUNY, et al.,
Defendants-Appellees,

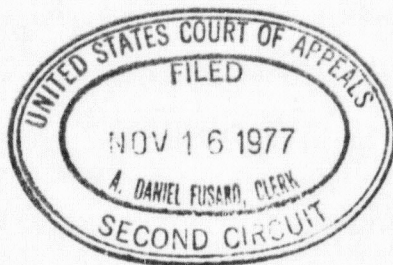
ANNA SELMA VINJE MORPURGO,
Plaintiff-Appellant,

-vs.-

UNITED STATES OF AMERICA, et al.,
Defendants-Appellees.

IN FORMA PAUPERIS
PRO SE

Docket No. 77-6164
Docket No. 77-6165



APPELLANT'S COMBINED BRIEF
WITH COMBINED JOINT APPENDIX
ON APPEAL FROM THE COMBINED
JUDGMENT RENDERED 2 AUGUST 1977
FROM U.S.D.C./S.D.N.Y.

BRIEF PREPARED BY: ANNA SELMA VINJE MORPURGO
Appellant/Pro Se
Box 1091, Sag Harbor, N.Y.
(516) 725-1414

AND

J. TERENCE MacAVERY, ESQ.,
Consulting Attorney

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Appellant's
Brief

-1-

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
ANNA SELMA VINJE MORPURGO, :
Plaintiff-Appellant, :

-against- :

PROFESSIONAL STAFF CONGRESS/CUNY (PSC), :
VLADECK ELIAS VLADECK & LEWIS (VLADECK), :
BOARD OF HIGHER EDUCATION NYC (BHE), and :
JUDITH P. VLADECK, ANTHONY DE MEALAS, :
ABRAHAM EDEL, DAVID NEWTON, ROBERT KIBBEE, :
ARTHUR W. STERN, FREDDIE G. HOLT, :
RALPH MUNOZ, VINCENT DONATO, KASINE WALKER, :
AL KERSEY, MAXINE ARCHER, THOMAS W. BARRON, :
and JOHN/JANE DOE, :
Defendants-Appellees. :

PRO SE
Docket No. 77-6164
(75 Civ. 4913 (EW))

-----x
ANNA SELMA VINJE MORPURGO, :
Plaintiff-Appellant, :

-against- :

UNITED STATES OF AMERICA, BOARD OF HIGHER :
EDUCATION N.Y.C., MASSACHUSETTS INSTITUTE :
OF TECHNOLOGY, PRINCETON UNIVERSITY, and :
RICHARD KLEINDIENST, WILLIAM SAXBE, :
EDWARD H. LEVI, HENRY KISSINGER, :
MARY MOTHERSILL, ALFRED A. GIARDINO, :
ROBERT J. KIBBEE, DAVID NEWTON, :
HAROLD M. PROSHANSKY, HANS J. HILLERBRAND, :
ARNOLD KOSLOW, ABRAHAM EDEL, JULIUS ELIAS, :
GERALD MYERS, ANDREW J. McLAUGHLIN, :
JASON SAUNDERS, VIRGINIA HELD, PETER CAWS, :
RUDOLPH GREWE, C.S. HONG, ROBERTA THORNTON, :
NORMA REES, NAPHTHALI LEWIS, KURT SCHMELLER, :
Defendants-Appellees. :

PRO SE
Docket No. 77-6165
(75 Civ. 3840 (EW))

-----x

APPELLANT'S BRIEF
AND JOINT APPENDIX ON THE
TWO ACTIONS DISMISSED BY
THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK IN
THE COMBINED JUDGMENT DATED
2 AUGUST 1977 SIGNED BY THE
HON. EDWARD WEINFELD, U.S.D.J.

BRIEF PREPARED BY APPELLANT, PRO SE,
AND J. TERENCE McAVERY, ESQ.,
CONSULTING ATTORNEY

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I. INTRODUCTION

An appeal is taken by Plaintiff-Appellant from a combined Judgment dated 2 August 1977 signed by the Hon. Edward Weinfeld, U.S.D.J., in the United States District Court for the Southern District of New York granting summary judgment to some of the multiple Defendants-Appellees, and dismissal to all the other Defendants-Appellees. The basis for the Judgment was contained in two Opinions, #45374 and #46216, given by Judge Weinfeld (See APPENDIX, Exhibits 1 through 5).

Three actions brought by Plaintiff-Appellant against the multiple Defendants-Appellees were disposed of in the two Opinions:

(1) In Opinion #45374, Judge Weinfeld dismissed Plaintiff's claims under 75 Civil 186, and rendered Judgment against Plaintiff on that complaint on 1 December 1976; Plaintiff filed a pro se Appeal with an application for assignment of counsel to the United States Court of Appeals for the Second Circuit; the Second Circuit denied Plaintiff-Appellant's application and dismissed the Appeal on 24 March 1977 (See APPENDIX, Exhibit 6).

(2) In Opinion #45374, Judge Weinfeld also dismissed nearly all the claims brought by Plaintiff under two other actions, 75 Civil 3840 and 75 Civil 4913; Plaintiff filed a pro se Interlocutory Appeal with an application for assignment of counsel to the United States Court of Appeals for the Second Circuit; the Second Circuit denied Plaintiff-Appellant's application and dismissed the Appeal on 24 March 1977 without prejudice to renewal once the District Court had rendered a final judgment as to all the Defendants in those two suits (See APPENDIX, Exhibit 6).

(3) In Opinion #46216, Judge Weinfeld granted summary judgment to the remaining Defendants in 75 Civil 3840 and 75 Civil 4913.

An appeal to the Second Circuit is hereby taken on that part of the Judgment rendered on 2 August 1977 which pertains to 75 Civil 4913 in Appeal No. 77-6164; an appeal to the Second Circuit is hereby taken on that part of the

Judgment rendered on 2 August 1977 which pertains to 75 Civil 3840 in Appeal No. 77-6165; this combined Memorandum and Appendix pertains to both actions and appeals.

The four principal questions before the Court of Appeals on these appeals are as follows:

- I. Whether it was an error for the District Court to grant summary judgment to the "BHE Defendants" in 75 Civ. 3840 and 75 Civ. 4913 on the issue of denial of both substantive and procedural due process.
- II. Whether it was an error for the District Court to dismiss Appellant's complaints against all the other Defendants for failure to state a claim upon which relief can be granted under 42 U.S.C. 1985, 42 U.S.C. 2000e, Title VII of the Civil Rights Act of 1964, as amended, and the First and Fourteenth Amendments.
- III. Whether it was an error for the District Court to deny Appellant an opportunity to use the discovery device of examination before trial, and to contest the authenticity of documents submitted by Defendants in support of their motions.
- IV. Whether it was an error for the District Court to deny and/or ignore motions by Appellant and various Defendants to consolidate the three actions referred to in Opinion #45374.

FIRST, with respect to I above, Appellant contends that there are triable issues of fact which should be presented to a jury on the issue of denial of both substantive and procedural due process in the case of all the "BHE Defendants".

A triable issue of fact exists when it cannot be said as a matter of law that reasonable men would not differ in concluding that there is no substantial issue of fact. It is the law in this Circuit that the allegations of the party against whom the motion for summary judgment is made be taken as true. Furthermore, it is the law that the evidence submitted in opposition to the motion be viewed in a light most favorable to the party resisting the motion.

The Court below erred by rendering a decision that was wholly in neglect of the law and the weight of the evidence. The Court held that Appellant

failed to controvert Defendants' allegations (See APPENDIX, Exhibit 4, pp. 1-5); this was error. The Court below also held that Appellant had failed to controvert Defendants' allegations that she had no property or liberty claims under the Fourteenth Amendment; this was also error (Ibid., and see also #107 of the 3840 Record, Motion for Relief from Judgment under Rule 60(b)(1), Denied by Judge Weinfeld 24 August 1977).

SECOND, with respect to II above, it is argued that Appellant's pleadings and the evidence submitted in support thereof are sufficient basis for warranting a court in finding that a claim under which relief can be granted exists as to all the other Defendants in these two actions for their part in a conspiracy to interfere with Appellant's civil and Constitutional rights:

- (a) that Appellant's pleadings and the evidence submitted in support thereof are sufficient basis for warranting the finding that a claim exists against the "PSC Defendants" and the "VLADECK Defendants" for failure of the Union's statutory duty of fair representation under 42 U.S.C. 2000e-2; further, that this failure was prompted by their part in a conspiracy with the "BHE Defendants" to deny Plaintiff due process under the Fourteenth Amendment, for the purpose of interfering with Plaintiff's civil and political rights protected under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 1985, and the First Amendment.
- (b) that Appellant's pleadings and the evidence submitted in support thereof are sufficient basis for warranting the finding that a claim exists against the "EEOC Defendants" and the "NYS Defendants" and John/Jane Doe for their part in a conspiracy to interfere with Plaintiff's civil rights in both the EEOC and NYS investigations of Plaintiff's complaints against BHE and PSC, as protected under 42 U.S.C. 1985, et seq., and the retaliation clauses of Title VII of the Civil Rights Act of 1964, as amended.
- (c) that Appellant's pleadings and the evidence submitted in support thereof are sufficient basis for warranting the finding that a claim exists against the "USA Defendants" triable in the Southern District of New York under the "long-arm jurisdiction" under Section 302 of the NY-CPLR, and 28 U.S.C. Section 1346(b), 28 U.S.C. Section 1343, and 28 U.S.C. Section 1391(b), for their part in a conspiracy violating 42 U.S.C. 1985, et seq.
- (d) that Appellant's pleadings and the evidence submitted in support thereof are sufficient basis for warranting the finding that a claim exists against MARY MOTHERSILL for

her part in a conspiracy violating 42 U.S.C. 1985, et seq., either as intimidated material witness or as willing co-conspirator with the "BHE Defendants" and/or the "USA Defendants".

- (e) that Appellant's pleadings and the evidence submitted in support thereof are sufficient basis for warranting the finding that a claim exists against PRINCETON and MIT under the nonretaliation clauses of Title VII of the Civil Rights Act of 1964, as amended, and Title IX of the Federal Higher Education Act, and the First Amendment for their failure to admit Plaintiff to doctoral programs due to undeserved adverse or tentative character references from the "BHE Defendants" and/or an unlawful application of quota systems against women and minorities within MIT and PRINCETON, and/or their will to conspire with the BHE.
- (f) that Appellant's pleadings and the evidence submitted in support thereof are sufficient basis for warranting the finding that a claim exists against all of the "BHE Defendants" and that it was error for Judge Weinfeld to dismiss the due process claims against some of these, while failing to state the criterion for inclusion or exclusion of each of these "BHE Defendants" as he is required to do; hence that his decision to try only some of the "BHE Defendants" was wholly arbitrary and capricious and an abuse of judicial discretion.

THIRD, with respect to III above, it is argued in this appeal that Judge Weinfeld improperly denied Appellant opportunity to use the discovery device of oral examination before trial, and further denied her opportunity to contest the authenticity of documents submitted by Defendants in support of their motions, wherever such documents were not original documents and wherever such affidavits were sworn to by third parties not personally acquainted with the facts.

FOURTH, with respect to IV above, it is argued in this appeal that Judge Weinfeld repeatedly ignored or denied motions by Appellant and some Defendants to consolidate the three actions referred to in Opinion #45374 resulting in a premature disposition of 75 Civil 186 and Plaintiff's just claims therein.

II. RELIEF SOUGHT FROM THE SECOND CIRCUIT

Plaintiff-Appellant requests the United States Court of Appeals for the Second Circuit to

1. reverse the summary judgment granted to the "BHE Defendants" by the court below, as ordered in Opinion #46216, and to remand the matter for jury trial;
2. reverse the court below insofar as that court ruled that Appellant failed to state a claim under which relief can be granted with respect to all the Defendants and all the issues ruled upon in Opinion #45374, as enumerated in (a) through (f) of Section I above (pp. 5-6 of this memorandum);
3. to require the court below to grant Appellant full discovery procedures against all the Defendants in accordance with her previous applications, and to give her opportunity to contest the authenticity of the documents and testimony submitted by the "BHE Defendants";
4. to require the court below to consolidate actions 75 Civ. 4913 and 75 Civ. 3840.

III. THAT ALL REMEDIES UNDER RULE 60 TO
CORRECT ERRORS AND MISCONCEPTIONS
IN THE LOWER COURT HAVE BEEN EXHAUSTED

In a motion under Rule 60(b)(1) of the Federal Rules of Civil Procedure (See #⁹⁰107 of the 3840 Record), Plaintiff attempted to correct errors and misconceptions contained in Opinion #46216. Judge Weinfeld denied this motion on ⁹²24 August 1977 (See #⁹²109 of the 3840 Record).

Two other motions for leave to reargue and amend Opinion #45374 were also denied by the lower Court (See #¹⁸⁶94 and #69 of the 3840 Record, and APPENDIX, Exhibit 4, p.6).

Accordingly, Appellant has taken sufficient steps to attempt to obtain relief from judgment on grounds of errors and misconceptions as provided for under the Rules of the court below, and the Second Circuit may now review this.

**IV. POINTS PERTAINING TO THE APPEAL FROM
OPINION #46216 RENDERED 27 JULY 1977**

POINT I
GENUINE ISSUES OF DISPUTED FACT EXIST BAR-
RING SUMMARY JUDGMENT TO THE BHE DEFENDANTS

Appellant made the following factual claims, all of them denied by the BHE and these allegations controverted the allegations of Defendants:

1. Appellant had a contractual claim to be preferentially rehired for the Fall 1972 semester at Queensborough Community College/CUNY for her position which was available and given to a new applicant in violation of Article 25.6 of the UFCT/BHE Agreement.
2. Appellant was not preferentially rehired in Fall 1972 due to sex, race, religious, and political discrimination in violation of Article 7 of the UFCT/BHE Agreement and Title VII of the Civil Rights Act of 1964, as amended, and 42 U.S.C. 1985, et seq., and the First Amendment, for her civil rights activities on behalf of women and nonwhites in The City University of New York.
3. Appellant was not preferentially rehired in Fall 1972 or thereafter anywhere within The City University of New York as a result of her having been falsely pronounced "professionally incompetent" by the BHE without a competency hearing, in violation of Article VII of the Bylaws of the Board of Higher Education and Section 6206-b(3) of the New York State Education Law.
4. Appellant further was not preferentially rehired for a half-line tenure-bearing position as Lecturer at Queensborough Community College/CUNY in Fall 1971, and all subsequent terms thereafter, which was available and given to a faculty member with less seniority, in violation of Articles 25.6 and 7 of the UFCT/BHE Agreement, and Title VII of the Civil Rights Act of 1964.
5. Appellant's matriculation in the doctoral program in Philosophy at The Graduate School and University Center/CUNY was untimely terminated in retaliation for her civil rights activities as a member of the collective bargaining unit of The City University of New York and for her civil rights role in student government, in violation of Article 7 of the UFCT/BHE Agreement, the non-retaliation clauses of Title VII of the Civil Rights Act of 1964, and 42 U.S.C. 1985, et seq., and the First Amendment.
6. Appellant's good grades and fair academic recommendations from duly appointed academic advisors were arbitrarily and capriciously overruled by administrators in violation of Paragraph 6 of the Document titled "Adjudication of Student Grievances Regarding Grades".

DISCUSSION

(1) It was error for the court below to rule that Appellant had no property interest protected under the Fourteenth Amendment (See APPENDIX, Exhibit 4, p. 2). Article 25.6 of the UFCT/BHE Agreement (See APPENDIX, Exhibits 7,8,9) gave Appellant job security sufficient to meet the property interest requirement, since she had a justifiable expectation of continued employment that could not be negated by the mere receipt of unfavorable evaluations; unfavorable evaluations formed a sufficient condition for nonreappointment only under the first year, or probationary period, of teaching employment at Queensborough Community College (QCC); Appellant was in her third year of consecutive reappointment as college teacher at QCC and had a number of excellent teaching evaluations sufficient to meet the standards of having passed the probationary period.

None of the other reasons which are not discriminatory, as permitted under Article 25.6, applied to not reappoint Appellant for Fall 1972: there was no financial cutback or curriculum change terminating her line of appointment and Appellant's position was given to a new applicant; registration was sufficient; Appellant was under no charge of misconduct. These reasons had been firmly established in another Arbitration proceeding by Arbitrator Joseph F. Wildebush in a ruling dated 25 May 1970 (See ⁷⁷~~#94~~, Exhibit C, pp. 14-31 of the 3840 Record) as being the only nondiscriminatory reasons for nonreappointment once past the probationary period. The Arbitration Award of Milton Rubin, given to the BHE, strengthened this earlier Award to the PSC, by ruling that two unfavorable evaluations, once past the probationary period, were not sufficient conditions for nonreappointment under Article 25.6, and since all the other conditions did not apply, the only sufficient condition which could apply and not violate the Agreement was that Appellant had been found "professionally incompetent" by the BHE. But if this was the only reason, then the BHE arrived at its conclusion without a statutory hearing, violating Appellant's civil rights and Fourteenth

Amendment rights.

The fact that the BHE had a policy of giving no reasons for nonreappointment (See ²²~~#25~~, Exhibit 2 of the 4913 Record) was of no consequence; in giving the BHE the Award at Appellant's Arbitration, Arbitrator Milton Rubin found the only reason possible under the UFCT/BHE Agreement; in accepting the Award, BHE committed itself to the findings of the Arbitrator that the reason was Appellant's professional incompetence; but it came to this finding without ever holding a statutory hearing, violating Appellant's Fourteenth Amendment rights, for under the Nota Bene Clause of Article 6.4 of the UFCT/BHE Agreement (See APPENDIX, Exhibit 9, Article 6.4), the powers of the Arbitrator were specifically limited to remanding the matter for compliance with established university procedures, such established procedures in this case being the holding of a competency hearing under the Bylaws of the BHE, Article 7.

(2) Appellant had strong weight of evidence to controvert any charge falling under the category of "professional incompetence": she had, and continues to have, a spotless professional and personal record, no mental or physical handicaps, full credentials and excellent references for the teaching of Philosophy on the college level; moreover, she possessed excellent student evaluations and many excellent teaching evaluations from faculty appointed to observe her; registration in her classes was very high in comparison to other Philosophy instructors at QCC; and she could prove that a position to which she was entitled under Article 25.6 of the UFCT/BHE Agreement had been taken away from her in violation of the contract and given to a Catholic Priest without proper credentials to teach Philosophy, and without any other standing under union contract. There was also the fact that QCC had been and still is under censure by both the American Philosophical Association and the American Association of University Professors for its frequent breaches of Article 7 of the UFCT/BHE Agreement on the question of academic freedom. Appellant, prior to her employment at QCC, had a public record, in the national press, of support of various civil rights

movements which came regularly into conflict with orthodox religious beliefs; and Appellant could show that such orthodox religious beliefs dominated the administration of QCC and its Social Science Department Personnel & Budget Committee, responsible for her nonreappointment.

This weight of evidence was sufficient to sustain an Arbitration hearing under Article 7 of the UFCT/BHE Agreement, but the union (PSC) decided not to arbitrate that issue because Arbitration was not subject to the rules of evidence. However, the statutory hearing under Article 7 of the BHE Bylaws did provide for adherence to the rules of evidence, and Appellant had a right to demand such a hearing from the BHE with or without the PSC's support. Failure of BHE to hold a statutory hearing on the question of discrimination, under Article 7 of its Bylaws, also went against established procedures in the handling of civil rights complaints within The City University of New York, for which a Special Assistant to the Chancellor had been instituted, to hear and investigate such claims; thus BHE also violated civil rights statutes.

(3) It was further error for the court below to rule that Appellant had no liberty interests protected under the Fourteenth Amendment (See APPENDIX, Exhibit 4, p. 2). Appellant, as fully qualified, female, and having seniority rights to preferential hiring throughout The City University of New York, and further having affirmative action rights to preferential hiring, and further having been recommended for teaching posts at a number of CUNY colleges by their administrative heads, had a reasonable expectation of continued employment in the University which was negated by the finding, arrived at without a statutory hearing, that she was professionally incompetent (See APPENDIX, Exhibit 7). These material facts were repeatedly raised by Appellant, and were repeatedly ignored by the lower court (See especially #⁷⁰107, #⁷¹88, #⁶⁷82 and #⁷⁷94 of the 3840 Record). And there was weight of evidence in support of Appellant's claims (See especially #⁷⁵92 of the 3840 Record).

(4) Appellant had a further claim against QCC and BHE which was through-ly suppressed by the PSC, and was never brought before the EEOC by either the VLADECKS or the PSC, in violation of 42 U.S.C. 2000e-2; this was that QCC had violated Title VII of the Civil Rights Act of 1964, before and after as amended, by taking away Appellant's tenure-bearing half-line as Lecturer Part Time and reassigning that position to an applicant with less seniority and no qualifications in the Philosophy discipline by virtue solely of the fact that he was a Roman Catholic Priest and intimate friend and associate of faculty members controlling hiring and promotion in Appellant's department at QCC, many of whom were leading members of the Roman Catholic community in QCC. This factual issue raised by Appellant was also ignored by the lower court (See especially ^{52 67 77 71 90} #60, #82, #88, #94, and #107 of the 3840 Record).

(5) Appellant's civil rights activities on behalf of fair employment practises for women and nonwhites within The City University of New York were explicitly protected under Article 7 of the UFCT/BHE Agreement (See APPENDIX, Exhibit 9, Article 7). Appellant had dual status as both college teacher and doctoral student in The City University of New York; her union activities on behalf of civil rights extended to her doctoral program where, as elected member of student government, she was empowered and delegated to research affirmative action effectiveness in preparation for the CUNY Women's Coalition class action sponsored by the PSC and represented by the VLADECK law firm. Termination of Appellant's matriculation and nonreappointment as college teacher occurred immediately after she was delegated to research affirmative action and gave public notice of her readiness to testify on behalf of women Philosophy faculty instituting actions in the class action through the VLADECK law firm. Untimely termination of matriculation and nonreappointment as college teacher were acts done in retaliation for Appellant's assertion of her rights under Article 7 of the UFCT/BHE Agreement and the First Amendment, and violated 42 U.S.C. 1985, et seq., since they prevented Appellant from completing an official civil rights

investigation on behalf of both student government and the CUNY collective bargaining unit, ostensibly properly represented by PSC (See APPENDIX, Exhibits 13 through 18, and the list of plaintiffs in the attachment to ²⁶ #29 of the 4913 Record, Opinion of Judge Gagliardi, p. 1). Appellant produced a weight of evidence in support of this claim sufficient to try this issue (See ^{67 71} #82, #88, ^{74 75 79 80} #91, #92, #96, #97 of the 3840 Record).

(6) Appellant had weight of evidence sufficient to sustain an allegation of bad faith in the grading of her doctoral examinations and the untimely termination of her matriculation (See APPENDIX, Exhibits 10 through 16 and ⁷⁹ #96, Affidavit of Dorothy Wallace, in the 3840 Record). And this issue was not barred by any res judicata (See APPENDIX, Exhibit 5, pp. 16-17, and Exhibit 19, withheld pursuant to Local Rule Section 11(d) for presentation at oral argument). In addition to the circumstantial evidence outlined in (5) above, Appellant also had direct evidence that the BHE had broken its contractual agreement with Plaintiff as doctoral student in terminating her matriculation for allegedly failing an examination (See APPENDIX, Exhibit 11), and moreover could not even sustain its claim with any direct evidence that she had in fact failed the disputed examination, since the examination materials were lost or destroyed (See ⁷⁹ #96, Affidavit of Dorothy Wallace, and ⁸⁰ #97 of the 3840 Record).

The lower court ruled that the BHE Appellees abundantly established that no falsification or improper alteration of records or examination scores took place (See APPENDIX, Exhibit 4, p. 3). This was error; it was also error for the lower court to rule that Appellees had afforded Appellant ample notice of the academic requirements for remaining in the doctoral program (See APPENDIX, Exhibits 11 and 16) and made special extraordinary efforts to allow Appellant to meet academic requirements (See APPENDIX, Exhibits 13, 14, 15). The facts and affidavits submitted by Appellant clearly demonstrate that Appellees controverted the academic recommendations of Appellant's official academic advisor, the Rules of the doctoral program applying to Appellant, and the notice of the

requirements as previously stated to her (See APPENDIX, Exhibits 11 and 12), and applicable to all students; and further denied Appellant the opportunity to be tested by oral comprehensives as recommended by her official academic advisor and as demanded by Appellant, whose rights to demand same were guaranteed under the Rules of the program (See APPENDIX, Exhibits 12 and 13). The only reason for compelling Appellant to take written examinations was to prevent Appellant from facing her examiners, who were intent upon giving her failing grades under any and all circumstances in order to terminate Appellant's civil rights role in student government and to block her ability as an effective witness to discrimination against women faculty in the CUNY Women's Coalition class action.

Appellees further had no statutory right to controvert the academic opinions and recommendations of Appellant's official academic advisor without holding a competency hearing against Appellant's advisor; this firmly established principle that academic opinions may not be controverted by administrators was made explicit in Paragraph 6 of a document titled "Adjudication of Student Grievances Regarding Grades" (See APPENDIX, Exhibit 10, Paragraph 6); in controverting the recommendations of Appellant's advisor (See APPENDIX, Exhibits 14 and 13) without holding a competency hearing against that advisor, Appellees violated Appellant's rights under the Fourteenth Amendment to continued matriculation until such time as she might fail to meet the requirements set by her advisor, which were to pass two oral examinations and submit a written substantial paper; Appellant was in total accord with the recommendations of her advisor and would not have contested termination of matriculation had she failed oral examinations administered by qualified faculty members. What Appellant contested were written examinations, taken under protest, graded by biased and unqualified persons who have never been identified, and whose grade sheets are not to be found (See ⁷⁹~~96~~, Affidavit of Dorothy Wallace).

CONCLUSION

A large number of disputed issues of fact existed on the question of bad

faith and denial of both substantive and procedural due process which barred summary judgment to the BHE Defendants, and these were arbitrarily disposed of by Judge Weinfeld in total disregard of Appellant's right to a jury trial (See ^{14 58 66 71 90} #10, #72, #81, #88, #107 of the 3840 Record and #7, ³² #42 of the 4913 Record).

Appellant's pleadings and the evidence submitted in support thereof are sufficient basis for warranting the finding that "property" and "liberty" rights were violated without due process in her employment within The City University of New York, sufficient to meet the strictures set by the key precedent cited by Judge Weinfeld, Board of Regents of State Colleges vs. Roth (See APPENDIX, Exhibit 4, p. 2). Further, that the allegations of bad faith regarding termination of Appellant's matriculation as doctoral student met the strictures of the key precedent, Connelly vs. University of Vermont also cited by Judge Weinfeld and sufficiently diverged from the other key precedents Mahavongsanan vs. Hall and Gaspar vs. Bruton to warrant trying the issues of denial of both substantive and procedural due process in Appellant's doctoral program (See APPENDIX, Exhibit 4, p. 3). Hence summary judgment is improper in all instances.

V. POINTS PERTAINING TO THE APPEAL FROM
OPINION #45374 RENDERED 18 NOVEMBER 1976

POINT I

APPELLANT HAS STATED A CLAIM AGAINST EACH OF
THE OTHER APPELLEES ARISING FROM A COMMON
NUCLEUS OF FACT AND CONSOLIDATION IS WARRANTED

A. CLAIMS AGAINST "PSC Defendants" AND "VLADECK Defendants" AND "DOE"

Appellant's pleadings and the evidence submitted in support thereof are sufficient basis for warranting the finding that a claim under which relief can be granted exists against PSC, VLADECK, and DOE for failure of the Union's statutory duty of fair representation under 42 U.S.C. 2000e-2, violating Appellant's rights under 42 U.S.C. 1985, et seq., and Title VII of the Civil Rights Act of 1964, before and after as amended. Hence that PSC, VLADECK, and DOE are co-liable with BHE and consolidation is warranted.

In Opinion #45374 (See Exhibit 5, pp. 32-33), the lower court ruled that PSC Appellees were entitled to dismissal and/or summary judgment on the Section 1985 claim, and hence that no conspiracy existed, hence that failure of VLADECK Appellees to properly represent Appellant before the EEOC was not a conspiratorial act arising from a common nucleus of fact, and no federal question sufficient to give the lower court jurisdiction over the malpractice claims against the VLADECKS existed. (Ibid. pp. 34-37.) The lower court further ruled that Appellant had made only vague and conclusory statements not sufficient to state a claim under conspiracy statutes. (Ibid. p. 32.) All this was error.

Appellant recognized that PSC failed to introduce Article 7 claims under the UFCT/BHE Agreement at Arbitration due to the fact that that Agreement had waived Appellant's Constitutional rights to have/hearing on the discrimination question be subject to the rules of evidence (See #25, Exhibit 5, then Exhibit 4 and the Russo Memorandum also attached to the same papers, in the 4913 Record). But this is like recognizing that it is most decent for a thief to take only one's purse and not one's life in the bargain. The very fact that PSC failed to extend equal representation to various segments of the collective bargaining unit gave rise to various factions which brought charges against PSC with the Public Employment Relations Board of New York State (PERB), as had Appellant. The very fact that a class action on behalf of the women employees of CUNY was brought by a separate group, CUNY Women's Coalition, attested to PSC's failure to adequately represent women faculty in the collective bargaining unit. PSC attempted to cover up this failing in their statutory duty of fair representation by endorsing the Coalition's class action and encouraging one of their frequent attorneys, the law firm of VLADECK, ELIAS, VLADECK AND LEWIS (VLADECK), to represent the Coalition in its class action (See #27, #29, and #14, Russo Affidavit Pursuant to General Rule 4(c)). Yet this was mere subterfuge, for this apparent favor to the Coalition resulted in a conflict of interest in each case where a VLADECK client had claims against both PSC and BHE; Appellant's claims were of

this kind:

(1) PSC failed in its statutory duty under 42 U.S.C. 2000e-2 to introduce adequate claims, under Article 7 of the UFCT/BHE Agreement, on behalf of Appellant. The fact that it did not arbitrate under Article 7 because it discovered that the UFCT/BHE Agreement had waived rights guaranteed Appellant under the Constitution and State Law is not sufficient excuse for this failing; PSC should have taken adequate steps to safeguard Appellant's civil rights to make up for this failing in the union contract, or should have sued in the courts to negate this clause of the Agreement; instead, it should be noted that in the subsequent PSC/BHE Agreement effective Fall 1972, PSC ceded even more Constitutional and State Law rights of the collective bargaining unit in favor of binding arbitration not subject to the rules of evidence.

(2) BHE members of Personnel and Budget Committees, who hire and fire within The City University of New York, may be members and officers of PSC, leading to a conflict of interest and supporting the allegation that PSC is not engaged in collective bargaining in good faith for all the members of the collective bargaining unit.

(3) If PSC endorsed the CUNY Women's Coalition class action, and made available to it the services of one of its attorneys, the VLADECK law firm, rather than instituting a class action directly under PSC for the women of its collective bargaining unit, then any act of negligence on the part of the VLADECK firm is also an act of negligence for which PSC is co-liaible.

(4) Either PSC or VLADECK failed to take adequate steps to preserve evidence and testimony and to safeguard Appellant's official position as member of student government researching affirmative action effectiveness, for the purpose of her being a witness to slander and interference with the civil rights of Alice Jourdain and other women instituting actions through the VLADECKS in the class action. (See #²⁹35, #³¹37, #²⁶29 of the 4913 Record, and Exhibit 17, A and B of APPENDIX herein.)

(5) Both PSC and VLADECK failed to adequately represent Appellant in the EEOC investigation, where VLADECK was supposed to have acted as counsel for Appellant.

B. CLAIMS AGAINST "EEOC Defendants" AND "USA Defendants" AND "DOE"

Even if Appellant wished to withdraw claims against the "USA Defendants" in this appeal, she cannot do so because the EEOC has testified that the acts of EEOC employees who are Defendants-Appellees in 75 Civ. 4913 were all performed as a result of official EEOC directives; there is moreover the very real question, which cannot be settled in advance of trial of all of the other issues, as to whether any of the acts of the individual Appellees herein were performed in part under official directives from the "USA Defendants". (See #6, p. 4, of the 4913 Record.) The substance of Appellant's claims against the "USA Defendants" is contained in a series of affidavits submitted in camera and directed sealed and vaulted by Judge Weinfeld (See #59⁵² of the 3840 Record). The question raised is not one where Government directly acted to interfere with Appellant's civil rights, but rather whether individuals holding Government posts, who were prone to extortion or other pressures from DOE, acted improperly in the name of Government to interfere with Appellant's civil rights. This claim falls under 42 U.S.C. 1985, et seq., and may not be dismissed as long as the EEOC Appellees assert that the EEOC compelled them to delay and interrupt their investigation of Appellant's grievances, and in other ways leave their posts and be negligent in the performance of duty. Thus the pleadings are adequate to warrant a court in finding that a claim under which relief can be granted exists as to the "USA Defendants".

With regard to the individuals employed in the New York District Office of Equal Employment Opportunity Commission, the "EEOC Defendants", Appellant's pleadings and the evidence submitted in support thereof are sufficient basis for warranting a court in finding that a claim exists under which relief can be granted, under 42 U.S.C. 1985, et seq. (See #7, #20, #21^{17 16} of the 4913 Record.)

C. CLAIMS AGAINST MARY MOTHERSILL

Appellant's pleadings and the evidence submitted in support thereof are sufficient basis for warranting a court in finding that a claim under which relief can be granted exists as to Appellee MOTHERSILL, either as intimidated material witness or willing co-conspirator with the "BHE Defendants" in suppressing information of a conspiracy to interfere with Appellant's civil rights in education and employment, in violation of 42 U.S.C. 1985, et seq. The Court should note that Appellant made every effort to eliminate Professor Mothersill from the list of Defendants by offering her opportunity to voluntarily depose in exchange for immunity from prosecution, regardless of the content of her testimony, and this offer was not accepted (See #53 of the 3840 Record).

D. CLAIMS AGAINST PRINCETON AND MIT

Appellant's pleadings and the evidence submitted in support thereof are sufficient basis for warranting a court in finding that a claim under which relief can be granted exists as to Appellees PRINCETON and MIT under any or all of the following:

- (1) the nonretaliation clauses of Title VII of the Civil Rights Act of 1964, as amended, and Titles IX and VI of the Federal Higher Education Act, if their refusal to admit Appellant to their respective doctoral programs was the result of undeserved adverse or tentative character references given Appellant by the "BHE Defendants" as a result of her having filed grievances with H.E.W. and E.E.O.C. (See #92, Exhibit 4 of the 3840 Record).
- (2) Titles IX and/or VI of the Federal Higher Education Act, if Appellees discriminated against Appellant for being female or presuming her to be nonwhite.
- (3) 42 U.S.C. 1985, et seq., if Appellant's name was included in some illegal Government or non-Government academic blacklist honored by BHE, PRINCETON, or MIT, either in virtue of the fact that she had been found "professionally incompetent" without a hearing within BHE, or for some other slanderous reason, given for the purpose of interfering with Appellant's civil rights. (See APPENDIX, Exhibit 7, and #54, Exhibit A of the 3840 Record.)

In Opinion #45374, the lower court ruled that Appellant had not alleged facts sufficient to support her allegations of discrimination; this was error. (See APPENDIX, Exhibit 5, pp. 40-41, and #59, #60, Appendix A, esp. p. 4, and of the 3840 Record; Appendix C/ see also APPENDIX, Exhibit 2, Second Amended Complaint,

Paragraphs 23,24,25,26,27,28,37,38,39,40,41.)

The pleadings sufficiently allege that Appellant was the most qualified applicant, regardless of her sex or race, to the doctoral programs at PRINCETON and MIT; such an allegation is sufficient to try issues on violations of Titles IX and VI of the Federal Higher Education Act, especially since Appellant should have been admitted under affirmative action for female applicants, and possibly also under affirmative action for nonwhite applicants, since Appellant did not identify herself as specifically "Caucasian" (Appellant stated in her applications that she was a "fully integrated fourth-world human").

Neither MIT nor PRINCETON submitted any affidavits denying Appellant's allegation that she was the most qualified applicant, in any of their answering or opposing papers; this is most significant, since even a simple unfavorable academic evaluation of one of Appellant's submitted papers to MIT or PRINCETON, from a noted scholar, would have sufficed to counter Appellant's claim without further ado, for Appellant has no claim against any university that rejects her ^{direct} on academic grounds, as a result of a scholar's/rejection of her submitted academic work. Yet no direct academic opinion was submitted by Counsel for Appellees (See #5, ³⁴~~#6~~, ³⁵~~#39~~, ³⁶~~#40~~, #42, ⁴³~~#49~~, ~~#50~~, of the 3840 Record). Thus it was error for the lower court to discount Appellant's claim that she was the most qualified applicant to PRINCETON and MIT doctoral programs in the absence of any evidence submitted to the contrary by the Appellees.

In support of her academic and personal competence, Appellant made sufficient allegations (See APPENDIX, Exhibits 3, First Amended Complaint, Paragraphs 34 and 35, and Exhibit 14; and see also ⁷⁵~~#92~~, Exhibits 3,4,5, and ⁵²~~#60~~, supporting documents to Appendices A,B,C, of the 3840 Record), supported by strong evidence of her academic and personal competence, as well as her suitability on other grounds, which PRINCETON has held to be relevant for admission preference: the fact that one of Appellant's cousins was an alumnus of PRINCETON, that Appellant also had another cousin who was a Nobel Prize Winner and

member of PRINCETON's Institute of Advanced Studies, that Appellant was a cum laude graduate of Hunter College, which is considered part of the "ivy league" circuit, and that Appellant's academic references were from scholars of the very highest order who recommended her "without qualification".

While all of these special qualifications would not have sufficed to give preferential admission to a white male applicant, the fact that Appellant was a female applicant of this type should have placed her on the top of the list of female applicants for admission to at least PRINCETON, or at least second in line to any black applicant qualified for admission to PRINCETON, if PRINCETON did not equate Appellant's failure to identify herself as Caucasian with the statement of minority applicants that they were in fact "black". Thus it was error for the lower court to assume that Appellant also had no real claim to admission to PRINCETON and MIT under their preferential admission policies as modified by affirmative action implementation.

On the other hand, if PRINCETON and MIT rejected Appellant because they learned from BHE faculty or administrators that Appellant had been found "professionally incompetent" as a college teacher, then this was a denial of Appellant's "liberty" rights under the Fourteenth Amendment, for the doctoral programs in Philosophy at PRINCETON and MIT give preferential admission to persons preparing for college teaching careers, as do all other ivy league universities. Persons found "professionally incompetent" are blacklisted from college teaching and from academic programs preparing for college teaching careers. If Appellant is on such a list of "professional incompetents", it is for no reason other than her civil rights activities, in violation of 42 U.S.C. 1985, et seq., and the exercise of her First Amendment rights.

E. BALANCE OF CLAIMS AGAINST THE "BHE Defendants"

In Opinion #45374, the lower court dismissed all the other claims against the "BHE Defendants" except for due process claims against some of the "BHE Defendants"; it was error for the lower court to dismiss all the other claims,

and it was further error for the lower court to exclude some of the "BHE Defendants" from the due process claims without stating, for each of those Defendants, the reason for dismissal of the due process claim, as the court is required to do (See APPENDIX, Exhibit 5, pp. 16-17, 41-42).

Appellant's pleadings, and the evidence submitted in support thereof, are sufficient basis for warranting a court in finding that a claim under which relief can be granted exists against BHE and the "BHE Defendants" under Title VII of the Civil Rights Act of 1964, before and after as amended, and 42 U.S.C. 1985, et seq., with relation to her job as college teacher within The City University of New York and her civil rights activities on behalf of the women of the CUNY collective bargaining unit; and further with relation to her other status as doctoral matriculant and member of student government researching affirmative action effectiveness (See pp. 8-15 of this memorandum and supporting Exhibits).

The only statement the BHE could make in its own defense at the EEOC investigation was that it did discriminate against Appellant due to her "professional incompetence", but this finding was arrived at without a hearing of any kind at which Appellant might have been permitted to counter more specific charges falling under the category of "professional incompetence". That the EEOC accepted this BHE defense on face value, without compelling it to make more specific charges, attests to the negligence of the EEOC investigation in this matter, sufficient to permit a court to review this determination (See APPENDIX, Exhibit 7).

Moreover, this shift of the BHE, toward Appellant's presumed "professional incompetence", arising from the determination of Arbitrator Milton Rubin that this was the only possible reason which would not violate union contract in nonreappointment of Appellant (See APPENDIX, Exhibit 8), represented a direct reversal of its position at Arbitration; in the very words of BHE Counsel Eric Rosenfeld, in the BHE Memorandum submitted to Milton Rubin (See

#94, Exhibit B, pp. 17-20):

"The instant case...bars the Arbitrator from finding that Ms. Vinje-Morpurgo was denied reappointment on the basis of professional incompetence."

In granting the Arbitration Award, Arbitrator Milton Rubin simultaneously denied the BHE contention that the decision not to reappoint Appellant was a strictly academic decision, hence not under the jurisdiction of the Arbitrator. Consequently, if BHE accepted the Arbitration Award without accepting the reason found by the Arbitrator, it accepted the Award in bad faith; for if the BHE did not hold Appellant "professionally incompetent", as it protested in its submissions at Arbitration, it should have immediately reinstated Appellant in her college teaching job. Failure to immediately reinstate Appellant, in default of bringing formal charges against her for "professional incompetence", was an act of bad faith under Article 25.6 of the UFCT/BHE Agreement, prompted by a will to exclude Appellant from college teaching under any and all circumstances, in order to interfere with her civil rights activities. (See #⁹⁰~~107~~, and #⁷⁷~~94~~ of the 3840 Record.)

Nor can the denial of due process claims be dismissed against any of the BHE Defendants, for the lower court offered no criterion for inclusion or exclusion of any of the individuals employed by the BHE, all of whom are alleged to have taken part in the conspiracy to deny due process (See APPENDIX, Exhibits 2, Second Amended Complaint, Paragraphs 31,32,33,34, and 3, First Amended Complaint, Paragraphs 19,20,23), as part in a conspiracy to interfere with Appellant's civil rights under 42 U.S.C. 1985, et seq., and the First Amendment.

CONCLUSION

Appellant has stated a claim against each of the Appellees herein, arising from a common nucleus of fact, her arbitrary inclusion under a class of persons termed "professionally incompetent" against whom universities may lawfully discriminate (See APPENDIX, Exhibit 7) for her civil rights activities, violating 42 U.S.C. 1985, et seq., and her First Amendment rights, without due process.

POINT II
THE LOWER COURT ERRED IN
FAILING TO CONSOLIDATE THE
THREE COMPLAINTS REVIEWED
IN OPINION #45374

Appellant made a number of attempts to have the lower court consolidate the three complaints, and all of these were ignored and/or denied by the lower court. This resulted in premature settlement of 75 Civ. 186 and the exclusion of many documents and affidavits related to 75 Civ. 186 and 75 Civ. 4913 and 75 Civ. 3840 which were arbitrarily filed only in the 75 Civ. 186 Record; hence the many missing documents in the 3840 and 4913 Records herein. It was error for the lower court to determine that these three complaints, each of which arises from a common nucleus of fact, should not be consolidated for all purposes. The acts complained of herein do so arise, and consolidation is warranted. Since the Second Circuit has already dismissed the appeal on 75 Civ. 186 (See APPENDIX, Exhibit 6), the relief requested of this Court is that 75 Civ. 3840 and 75 Civ. 4913 be consolidated at this time, and that the Court of Appeals direct the lower court to review those claims made in 75 Civ. 186 that as falling under 42 U.S.C. 1985, et seq., are reiterated in 75 Civ. 3840 and 75 Civ. 4913, upon a finding in favor of Appellant on the denial of due process issue. Those claims are:

1. That Appellant was denied transfer to an interdisciplinary doctoral program at The Graduate School and University Center for which the Dean and Faculty recommended her.
2. That Appellant was denied matriculation for a Master of Arts Degree in Communications at Hunter College, for which Hunter College Deans and Faculty recommended her.
3. That Appellant was denied access to Government-sponsored research programs at Hunter Institute of Allied Health Sciences for which the two heads of the Institute recommended her.

These claims are reiterated in Paragraphs 12,17,37 of the 75 Civ. 3840 complaint (See APPENDIX, Exhibit 2, Second Amended Complaint) and Paragraphs 22,34,35 of the 75 Civ. 4913 complaint (See APPENDIX, Exhibit 3, First Amended Complaint). The fact that the lower court arbitrarily dismissed all these claims, which are suitably substantiated in the pleadings by numerous exhibits attesting to

the very high calibre of Appellant's academic and professional sponsorship and credentials (See ⁵²#60, supporting documents of Appendices A,B,C, of the 3840 Record), is further indication that the lower court assumed an overly skeptical attitude toward Appellant's pleadings and the evidence submitted in support thereof, which it was error to do. (See APPENDIX, Exhibit 5, pp. 3-17.)

POINT III

IT WAS ERROR FOR THE LOWER COURT TO DENY APPELLANT TIMELY DISCOVERY AND OPPORTUNITY TO CONTEST AUTHENTICITY OF DOCUMENTS

Prior to the handing down of the decisions granting dismissal and/or summary judgment to most of the Defendants in the three actions reviewed in Opinion #45374, Appellant made numerous applications for discovery and return of interrogatories, all of which were denied by Judge Weinfeld. The only exchange of interrogatories which occurred in this period was a voluntary one, between Appellant and the VLADECK Appellees (See ²⁰#22, ²¹#23, #19, ¹⁶#24, ⁷#30, ¹⁴#31 of the 4913 Record and #60, #59 of the 3840 Record), as a result of which in Opinion #45374 Judge Weinfeld, while recognizing that Appellant had succeeded in stating a malpractice claim against the VLADECKS, ruled that Appellant had not succeeded in presenting a federal claim substantially arising out of the same nucleus of facts (See APPENDIX, Exhibit 5, pp. 35-37). It was error for the lower court to rule on either the VLADECK or PSC summary judgment motions without permitting Appellant to use the full discovery devices of return of interrogatories, and examination of documents applied for against the other Defendants (See ³¹#9, ³²#10, ⁴⁶#30, ⁴⁸#37, ⁵⁷#38, #55, #68, of the 3840 Record, and #7 of the 4913 Record), in order to establish her federal claim of a conspiracy under 42 U.S.C. 1985, et seq. In fact, the nature of Appellant's conspiracy claims should have prompted the lower court to permit Appellant's oral applications to Judge Weinfeld at various hearings that she be permitted to subpoena duces tecum a number of the BHE Defendants who were intimidated material witnesses to this conspiracy, to substantiate the allegations contained in her various affidavits since, acting pro se, her allegations were not being given full credibility.

Nor did the lower court ever permit Appellant to exercise her right to oral examination before trial and to contest the authenticity of documents submitted by the remaining Defendants subsequent to the rendering of Opinion #45374 (See #⁷⁴~~91~~ of the 3840 Record), and further gave the remaining Defendants ample opportunity to alter or lose key examination materials (See #⁷³~~90~~, #⁷⁹~~96~~, #⁸⁰~~97~~, #⁸²~~99~~, #⁸⁷~~104~~ of the 3840 Record). In all this, the lower court erred and showed bias toward the BHE Appellees.

POINT IV
APPELLANT'S CONSPIRACY CLAIMS
WERE GIVEN UNDUE SKEPTICISM
BY THE LOWER COURT

Appellant's pleadings and the evidence submitted in support thereof were sufficient to warrant a court in finding that a claim under which relief can be granted exists on the question of an organized crime conspiracy directed specifically against Appellant, which conspiracy may well have utilized the services of corrupt or intimidated persons employed in federal, state, or city Government to achieve Appellant's total exclusion from the academic and publishing communities.

Appellant substantiated her conspiracy claims primarily in an in camera statement ordered sealed and vaulted by Judge Weinfeld (See #⁵²~~60~~ of the 3840 Record). While the factors leading to the injuries suffered by Appellant may be highly complex and synergistic in type, whose combined effect results in a vastly complicated and expanding family of grievances, the most likely factor operative in the immediate flow of events leading to Appellant's loss of employment and matriculation at The City University of New York was that her presence at the University had been for many years a source of great concern on the part of the homosexual element employed within C.U.N.Y.

In the late 1950's, Appellant had been a nonhomosexual spokeswoman for the early Gay Liberation movement in the national press and had been twice elected in absentia to be Vice President of Gay organisations. She disassociated herself from these groups when she observed an organized crime takeover

of segments of these groups, reportedly by extortionists within the law enforcement network who selected as their targets persons in the academic and government-related fields of employment. Fearful for her own safety, Appellant did nothing to increase her peripheral knowledge of this organized crime infiltration, but the fact that she was a published writer of both fiction and nonfiction for national publications, and had worked under other writers and editors who had at times functioned as investigative journalists, may have led corrupt elements in The City University of New York actively engaged in extortion of persons employed within C.U.N.Y. to regard Appellant as a particular threat to their operations, especially after Appellant began to take an active part in the exposure of narcotics pushers on the QCC campus.

For this reason, it was unwarranted for the lower court to exercise so much skepticism as to Appellant's claim that a majority of the BHE Defendants are intimidated material witnesses to an organized crime conspiracy, and may be extorted into complicity in this conspiracy.

Since Appellant is not a homosexual, there are no grounds for finding her "professionally incompetent" by the BHE for the exercise of her First Amendment rights in defense of civil rights for the Gay community.

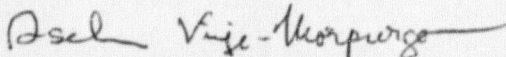
While there may be a question as to whether Gay rights are protected under 42 U.S.C. 1985, et seq., the fact that retaliation against Appellant was directed simultaneously against her for her civil rights activities on behalf of the women's movement and the black liberation movement, and that in each of these cases Appellant was acting to eliminate corrupt hiring practices within The City University of New York that worked against the hiring and promotion of the most qualified members of the academic community in favor of persons who could be controlled by corrupt administrators, is thus covered under 42 U.S.C. 1985, et seq., since this corruption does affect the rights of persons whose civil rights are statutorily protected.

VI. CONCLUSION

It is respectfully requested that the United States Court of Appeals for the Second Circuit grant Plaintiff-Appellant all the relief sought for, as outlined in Section II (page 7) of this Memorandum.

Dated: 16 November 1977

Respectfully submitted,


ANNA SELMA VINJE MORPURGO
Plaintiff-Appellant, Pro Se
Box 1091, Sag Harbor, NY 11963
(516) 725-1414

and

J. Terence MacAvery, Esq.
Consulting Attorney
169 West 73 Street, New York, NY 10023
(212) 874-2262

IN FORMA PAUPERIS

VII. JOINT AND COMBINED APPENDIX
75 CIVIL 4913/75 CIVIL 3840
Docket Nos. 77-6164/77-6165

- EXHIBIT 1: Combined Judgement Rendered 2 August 1977
- EXHIBIT 2: A. 75 Civil 3840 Second Amended Complaint
 B. 75 Civil 3840 Index to the Record on Appeal
 C. 75 Civil 3840 Docket Entries
- EXHIBIT 3: A. 75 Civil 4913 First Amended Complaint
 B. 75 Civil 4913 Index to the Record on Appeal
 C. 75 Civil 4913 Docket Entries
- EXHIBIT 4: OPINION #46216 dated 27 July 1977
- EXHIBIT 5: OPINION #45374 dated 18 November 1976
- EXHIBIT 6: USCA Mandate of 24 March 1977
- EXHIBIT 7: EEOC Determination of 1 August 1975
- EXHIBIT 8: Arbitration Award of Milton Rubin
- EXHIBIT 9: UFCT/BHE Agreement
- EXHIBIT 10: Document: "Adjudication of Student Grievances Regarding Gra
- EXHIBIT 11: Letter of Peter J. Caws dated 16 January 1970
- EXHIBIT 12: Rules of Philosophy Doctoral Program, 1967/68
- EXHIBIT 13: Letter of Abraham Edel dated 19 May 1972
- EXHIBIT 14: Evaluation of Roger Rosenkrantz dated 24 March 1970
- EXHIBIT 15: Letter of Appointment of Rosenkrantz dated 24 March 1970
- EXHIBIT 16: Deposition of Rosenkrantz dated 10 May 1975
- EXHIBIT 17: A. Reply of Alice Jourdain dated 16 March 1972
 B. Reply of Alice Jourdain dated 17 May 1972
- EXHIBIT 18: Deposition of A. Vourkas dated 6 February 1974, Affidavit
- EXHIBIT 19: NYSSC-NYC Article 78 Proceedings, Original File
 (under subpoena from the lower court, withheld for
 oral argument under Local Rule 8 11(d))
- EXHIBIT 20: Plaintiff's Answer to First Set of VLADECK Interrogatories
- EXHIBIT 21: Notice of Motion and Morpurgo Affidavit in Support of
 Motion to Reargue dated 26 November 1976
- EXHIBIT 22: EEOC Motion to Dismiss Amended Complaint and Supporting
 Memorandum
- EXHIBIT 23: EEOC Amended Charge
- EXHIBIT 24: Letter of Maxine Archer dated 7 August 1974
- EXHIBIT 25: EEOC Charge of Discrimination dated 28 September 1973
- EXHIBIT 26: Affidavit of Morpurgo dated 10 May 1976
- EXHIBIT 27: Memorandum of Judge Weinfeld dated 31 December 1975
- EXHIBIT 28: Decision of Weinfeld dated 17 March 1975
- EXHIBIT 29: Affidavit of Robert G. Desmond, with exhibit annexed thereto,
 dated 30 June 1976

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
: SS.:
COUNTY OF SUFFOLK)

ANNA SELMA VINJE MORPURGO, being duly sworn,
deposes and says:

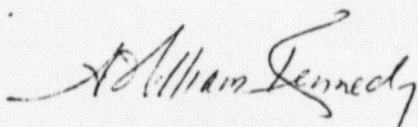
On this day I mailed the within APPELLANT'S BRIEF and ~~APPENDIX Exhibits 2-B and 3-B~~ to all counsel for the Defendants-Appellees herein, holding back all other Exhibits in the APPENDIX as per Local Rule § 11(d) and Forma Pauperis status.

Copies of brief and Exhibits 2-B, 3-B mailed to:

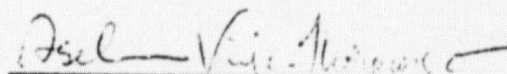
Rosemary Carroll, Esq., (BHE)
D. Nicholas Russo, Esq., (PSC)
Edwin L. Smith, Esq., (VLADECK)
Marleigh Dover Lang, Esq., (EEOC)
Nathaniel L. Gerber, Esq., (USA)
Robert G. Desmond, Esq., (MIT)
Ronald S. Herzog, Esq., (PRINCETON)
Michael B. Mukasey, Esq., (MOTHERSILL)

Sworn to before me this

15th Day of November, 1977



A. WILLIAM KENNEDY
NOTARY PUBLIC, State of New York
No. 52-7228810, Suffolk County
Term Expires March 30, 1978


ANNA SELMA VINJE MORPURGO
Appellant/Pro Se

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
ANNA SELMA VINJE MORPURGO,

Plaintiff-Appellant,

-vs.-

PROFESSIONAL STAFF CONGRESS/CUNY (PSC),
VLADECK ELIAS VLADECK & LEWIS (VLADECK),
BOARD OF HIGHER EDUCATION NYC (BHE), and
JUDITH P. VLADECK, ANTHONY DE MEALAS,
ABRAHAM EDEL, DAVID NEWTON, ROBERT KIBBEE,
ARTHUR W. STERN, FREDDIE G. HOLT,
RALPH MUNOZ, VINCENT DONATO, KASINE WALKER,
AL KERSEY, MAXINE ARCHER, THOMAS W. BARRON,
and JOHN/JANE DOE,

Defendants-Appellees.
-----x

ANNA SELMA VINJE MORPURGO,

Plaintiff-Appellant,

-vs.-

UNITED STATES OF AMERICA, BOARD OF HIGHER
EDUCATION N.Y.C., MASSACHUSETTS INSTITUTE
OF TECHNOLOGY, PRINCETON UNIVERSITY, and
RICHARD KLEINDIENST, WILLIAM SAXBE,
EDWARD H. LEVI, HENRY KISSINGER,
MARY MOTHERSILL, ALFRED A. GIARDINO,
ROBERT J. KIBBEE, DAVID NEWTON,
HAROLD M. PROSHANSKY, HANS J. HILLERBRAND,
ARNOLD KOSLOW, ABRAHAM EDEL, JULIUS ELIAS,
GERALD MYERS, ANDREW J. McLAUGHLIN,
JASON SAUNDERS, VIRGINIA HELD, PETER CAWS,
RUDOLPH GREWE, C.S. HONG, ROBERTA THORNTON,
NORMA REES, NAPTHALI LEWIS, KURT SCHMELLER,

Defendants-Appellees.
-----x

IN FORMA PAUPERIS

PRO SE

Docket No. 77-6164
(75 Civ. 4913 (EW))
USDC/SDNY

PRO SE

Docket No. 77-6165
(75 Civ. 3840 (EW))
USDC/SDNY

COMBINED AND JOINT
APPENDIX AND APPELLANT'S
COMBINED MEMORANDUM
ON APPEAL FROM THE COMBINED
JUDGMENT DATED 2 AUGUST 1977

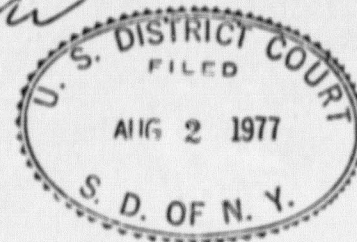
BRIEF PREPARED BY:

ANNA SELMA VINJE MORPURGO
Plaintiff-Appellant, Pro Se

AND

J. TERENCE MacAVERY, ESQ.
Consulting Attorney

Wenfeld, J.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
ANNA SELMA VINJE MORPURGO

Plaintiff

PRO SE
75 Civil 3840 (EW)

-against-

UNITED STATES OF AMERICA, et al.,

Defendants
----- X

JUDGMENT

ANNA SELMA VINJE MORPURGO

Plaintiff

PRO SE
75 Civil 4913 (EW)

-against-

PROFESSIONAL STAFF CONGRESS/CUNY (PSC)
et al.,

Defendants
----- X

Plaintiff having moved the Court for an order for immediate reinstatement and further motions pursuant to Rule 37, of the Federal Rules of Civil Procedure, and the City defendants having moved for summary judgment, pursuant to Rule 56, of the Federal Rules of Civil Procedure, and the said motions having come on to be heard before the Honorable Edward Weinfeld, United States District Judge, and the Court thereafter on July 27, 1977, having handed down its opinion denying plaintiff's motions and the Court having directed that judgment may be entered in favor of the City defendants as well as the remaining defendants in 75 Civil 3840 and 75 Civil 4913, who previously obtained orders granting summary judgment or dismissing plaintiff's complaints, it is,

ORDERED, ADJUDGED and DECREED: That defendants UNITED STATES OF AMERICA, et al., have judgment against plaintiff ANNA SELMA VINJE MORPURGO dismissing the complaint in 75 Civil 3840, and it is further,

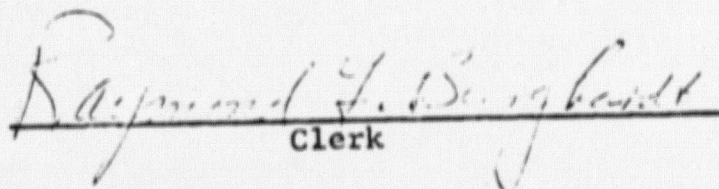
EXHIBIT 1.

Morpurgo -v- USA, et al- 75 Civil 3840 and 75 Civil 4913 (EW)

Judgment cont'd

ORDERED, ADJUDGED and DECREED: That defendants PROFESSIONAL STAFF CONGRESS/CUNY (PSC), et al., have judgment against plaintiff ANNA SELMA VINJE MORPURGO dismissing the complaint in 75 Civil 4913.

Dated: New York, N.Y.
August 2, 1977


Clerk

7c
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANNA BELMA VINJE MORPURGO,

Plaintiff,

75 Civ. 3840 (EM) Pro Se

-v-

UNITED STATES OF AMERICA,
BOARD OF HIGHER EDUCATION N.Y.C.,
MASSACHUSETTS INSTITUTE OF TECHNOLOGY,
PRINCETON UNIVERSITY,

and

RICHARD KLEINDIENST, WILLIAM SAXBE,
EDWARD H. LEVI, HENRY KISSINGER,
MARY MOTHERSILL, ALFRED A. GIARDINO,
ROBERT J. KIBBEE, DAVID NEWTON,
HAROLD M. PROSHANSKY, HANS J. HILLERBRAND,
ARNOLD KOSLOW, ABRAHAM EDEL, JULIUS ELIAS,
GERALD MYERS, ANDREW J. McLAUGHLIN,
JASON SAUNDERS, VIRGINIA HELD, PETER CAWS,
RUDOLPH GREWE, C.S. HONG, ROBERTA THORNTON,
NORMA REES, NAPHTALI LEWIS, KURT SCHMELLER,
Defendants.

SECOND AMENDED COMPLAINT

Civil Action for Declaratory and
Injunctive Relief and
Money Damages

Plaintiff, pro se, alleges as follows for her Second Amended Complaint:

JURISDICTION

1. This is a civil action for declaratory and injunctive relief and money damages arising under various sections of the Civil Rights Act including 42 U.S.C. Section 1985 (conspiracy and failure to prevent a conspiracy to interfere with Plaintiff's civil rights), the First, Fourth, Fifth, and Ninth Amendments to the Constitution, Titles IX and VI of the Federal Higher Education Act, and other civil rights statutes.

2. It is further alleged that a class action presently before Judge June Green of the United States District Court for the District of Columbia, 75 Civ. 1773 (Halkin, et al., -v- Helms, et al.) includes Plaintiff as an unnamed party and member of the class; that is a civil action for declaratory and injunctive relief and money damages, arising under the First, Fourth, Fifth, and Ninth Amendments to the Constitution; Title 18, U.S.C., Sections 2510-2520; Title 47, U.S.C., Section 605; Title 50, U.S.C., Section 403(d)(3). The jurisdiction of that Court is predicated on Title 18, U.S.C., Section 2520; Title 28, U.S.C., Sections 1331(a), 1343(4) and 1361; Title 47, U.S.C., Section 605; Title 42, U.S.C., Section 1985(3).

3. Plaintiff, pro se, is not an attorney and is geographically and economically isolated from adequate legal reference facilities and counsel, and thus respectfully leaves it to the Court to determine the full extent of its own jurisdiction over each of the issues herein.

4. A majority of the acts complained of occurred within the Southern District of New York and while Plaintiff resided therein. The acts complained of which fall under the class action described in 2 above are alleged to have originated in the New York Headquarters of the Federal Bureau of Investigation, 201 East 69th Street, New York City, while Plaintiff resided at 305 East 72nd Street, New York City, and was matriculated at Hunter College/C.U.N.Y., 695 Park Avenue, New York City, in 1967, and to have spread from there throughout the United States and abroad.

5. Some of the individual defendants have their residence or principal offices in the Southern District of New York.

6. The matter in controversy, exclusive of interests and costs, exceeds \$10,000 and thus jurisdiction is further claimed under 28, U.S.C., Section 1331.

PARTIES

7. Plaintiff: ANNA SELMA VINJE MORPURGO, presently resides at Union Street, Sag Harbor, NY 11963; (516) 725 1414.

8. Defendants:

a. UNITED STATES OF AMERICA, is herein being sued solely for declaratory and injunctive relief, and is represented by the U.S. Attorney for the Southern District of New York, Mr. Nathaniel L. Gerber, Esq., of Counsel, Courthouse Annex, One St. Andrew's Plaza, New York, NY 10007.

ab. RICHARD KLEINDIENST, WILLIAM SAXBE, EDWARD H. LEVI, HENRY KISSINGER, and _____, alleged to be one or more of the other individual defendants who are parties herein, are being sued for declaratory, injunctive, and monetary relief, for acts unlawfully performed as officials or employees of the United States Government, and are each and everyone of them represented by the U.S. Attorney for the Southern District of New York (Mr. Gerber, of Counsel).

b. BOARD OF HIGHER EDUCATION N.Y.C. (BHE), is being sued for declaratory, declaratory, injunctive, and monetary relief, and is represented by Office of Corporation Counsel N.Y.C., Ms. Rosemary Carroll, Esq., of Counsel, Municipal Building, New York, NY 10007.

bb. ALFRED A. GIARDINO, ROBERT J. KIRBEE, DAVID NEWTON, HAROLD M. PROSHANSKY, HANS J. HILLERBRAND, ARNOLD KOSLOW, ABRAHAM EDEL, JULIUS ELIAS, GERALD MYERS, ANDREW J. McLAUGHLIN, JASON SAUNDERS, VIRGINIA HELD, PETER CAWS, RUDOLPH GREWE, C.S. HONG, ROBERTA THORNTON, NORMA REES, NAPHTALI LEWIS, KURT SCHMELLER, are being sued for declaratory, injunctive, and monetary relief, for acts unlawfully performed as officials, employees, or faculty of The City University of New York, as administered and indemnified by Board of Higher Education N.Y.C. (BHE), and are each and every one of them represented by Office of Corporation Counsel N.Y.C. (Ms. Carroll, of Counsel).

c. MASSACHUSETTS INSTITUTE OF TECHNOLOGY, Cambridge, Massachusetts, is being sued for declaratory, injunctive, and monetary relief, and is represented by Wien, Lane & Malkin, Mr. Robert G. Desmond, of Counsel, 60 East 42nd Street, New York, NY 10017.

d. PRINCETON UNIVERSITY, Princeton, New Jersey, is being sued for declaratory, injunctive, and monetary relief, and is represented by Jackson, Nash, Brophy, Barringer & Brooks, Mr. Robert S. Herzog, Esq., of Counsel, 330 Madison Avenue, New York, NY 10017.

e. MARY MOTHERSILL, 250 Riverside Drive, New York, NY 10025 and Paul's Lane, Bridgehampton, NY 11932, is being sued for declaratory, injunctive, and monetary relief for acts performed as Chairperson of the American Philosophical Association Committee on the Status of Women in the Profession.

f. All the foregoing individual defendants are sued in their individual and official or former official capacities.

RELATED ACTIONS

9. Plaintiff has two related actions consolidated with the instant action in which some of the defendants herein are also parties therein:

a. 75 Civ. 186 (EW) (Morpurgo -v- Board of Higher Education N.Y.C., et al.,), to be tried in advance of the instant action.

b. 75 Civ. 4913 (EW) (Morpurgo -v- Professional Staff Congress/CUNY, et al.,), to be tried in advance of the instant action.

10. Plaintiff has exhausted the appeals procedure for injunctive relief as required under New York State Law, in two Article 78 NYS-CPLR proceedings in New York County Court of The Supreme Court of the State of New York, Index No. 10601/74 and Index No. 11800/74, consolidated and dismissed by a matter of law in Special Term, Part I of that Court by the Hon. Alfred J. Callahan, and on appeal as a matter of right in the Appellate Term of New York State Supreme Court, against Defendant, Board of Higher Education N.Y.C.

ALLEGATIONS

11. In the period 1951 to the present, Plaintiff has publicly advocated human rights, integration, separation of church and state, and sexual freedom, both as artist and college teacher, under lawful and proper channels for public expression of opinions; and Plaintiff suffered blacklisting and exclusion from both employment opportunities and equal facilities in education as a result of the public expression of her opinions, from government agencies and private corporations and academic institutions, from 1951 through 1962 and then again from 1967 to the present.

12. The issues to be tried in these proceedings originated in 1967 and are continuing in the present. It is alleged that each of the acts complained of form part of a wide conspiracy to interfere with the civil rights and Constitutional liberties and rights of members of Plaintiff's class, and have been performed with the aid and sanction of federal agencies and employees.

X 13. Plaintiff is a foreign-born United States citizen of ambiguous race, religion, sex, national origin, and political affiliation; on different occasions and by different groups, Plaintiff has been classified (a) Caucasian, Jewish, female, Italian, Democrat, (b) Nonwhite, Atheist, Lesbian, Jewish, Communist, (c) Nonwhite, Protestant, Bisexual, Migrant, Socialist, (d) Caucasian, Atheist, Bisexual, Norwegian, Conservative...and other and numerous combinations of the above; and Plaintiff has been discriminated against by a very wide variety of persons and groups who hold Plaintiff to be a member of a despised class of persons, against which they discriminate and conspire to interfere with civil rights and Constitutional rights. It is alleged that the protection of the Constitution and of civil rights statutes extends to all United States citizens equally, regardless of their membership in any one class or combination of classes.

14. Plaintiff further alleges membership in the class of persons who at various times during and after 1967 engaged in activities in opposition to the war in Indochina or in other lawful political activities, as a result of which they became the subject of intrusive counterintelligence actions and files, conducted and maintained by a Special Operations Group within the Central Intelligence Agency known as "Operation Chaos," as a result of antiwar poetry and plays produced and publicly recited since 1962, by Plaintiff and other performers.

FACTS

15. On information and belief, in the period 1940 through 1962, Plaintiff's parents and Plaintiff were politically blacklisted and excluded from government appointment or employment and were classified as "Undesireables" for reasons due to sex, religious, ethnic, race, and political discrimination; this condition was briefly alleviated in the period 1962 through 1966, under the Johnson Administration, and all centralized records were dispersed and/or destroyed.

16. On information and belief, record of Plaintiff's government classification as an "Undesireable" was preserved by Hunter College/C.U.N.Y. in 1962 and forwarded to BHE and the C.U.N.Y. Graduate School along with Plaintiff's other records in 1967, when Plaintiff went on to doctoral studies therein.

17. On information and belief, Plaintiff came to be confirmed an "Undesireable" by government agencies in the period after 1967 in the following sequence of events:

a. In 1967, Plaintiff was recommended for special interdisciplinary doctoral studies at Rockefeller University and for special research fellowships through National Science Foundation and Rockefeller Foundation pursuant to an application made by Professor Peter Caws, then Philosophy Chairman at Hunter College and newly-appointed Executive Officer at the C.U.N.Y. Graduate School, for which she was rejected due to sex discrimination at Rockefeller University, pursuant to the withdrawal of the recommendation of Professor Caws upon his discovery of Plaintiff's "feminism."

b. Plaintiff's record, preserved by Hunter College, was transferred to the Graduate School and preserved therein and rendered accessible to other universities and federal agencies with full sanction of BHE.

c. In 1968, Plaintiff was recommended by the two administrative heads of a special School within Hunter College/C.U.N.Y. for a teaching and research assistantship in the Communications Sciences; offices of the School were then located in the mezzanine floor of F.B.I. Headquarters at 201 East 69th Street, and part of the intended research was classified, and conducted under the auspices of C.U.N.Y. with full knowledge of BHE. Thus Plaintiff was subjected to an extensive personality investigation, and BHE made available to federal agencies all of its records on Plaintiff.

d. In 1969, as a result of federal security checks, Plaintiff was again classified as "Undesireable," and a large number of distinguished scholars and administrators appealed for a change of this ruling to a federal agency, thus Plaintiff was again reinvestigated and this time subjected to an intensive wire-tapping and other counterintelligence check, which included Armed Services cooperation in commanding persons in the Reserve who had been intimate with Plaintiff to reveal details of their relationship with Plaintiff.

e. In 1969 through 1972, due to highly conflicting data, and continued pressure from highly-respected faculty, no decision could be reached by government agencies as to the proper classification of Plaintiff, thus Plaintiff continued to be excluded from access to research programs and grants for which she was most qualified and highly recommended, until 1972, when publication of the Ellsberg papers in the New York Times resulted in a tightening of security within federal agencies, and a final determination against Plaintiff was handed down by the government.

18. No legitimate reasons exist or ever existed for excluding Plaintiff from classified research:

- a. Plaintiff has never had a mental illness.
- b. Plaintiff has never been a member of a subversive organization.
- c. Plaintiff is loyal to the United States and its Constitution.
- d. Plaintiff has no criminal record.
- e. Plaintiff does not object to the lawful practice of surveillance.
- f. Plaintiff does not object to the lawful maintenance of national security in scientific research.
- g. Plaintiff possesses the highest character references and academic references.

19. All the reasons given for classifying Plaintiff as an "Undesireable" violate Civil Rights statutes and the First Amendment.

20. On information and belief, all the individual defendants listed herein are withholding evidence of counterintelligence activity performed against Plaintiff and of Plaintiff's unlawful classification as an "Undesireable," and are thus acting in conspiracy with federal agencies in continuing to interfere with Plaintiff's civil rights and Constitutional rights.

→ 21. On information and belief, in the period 1972 through 1974, Plaintiff became the victim of even more intense and unlawful counterintelligence interference with her civil and Constitutional rights, as a result of the Ellsberg incidence coupled with the fact that Plaintiff could not be discouraged from continuing in research areas which were increasingly closer to these areas engaged in by her faculty advisors, which were classified and excluded her; thus BHE, in obedience to confidential federal directives, ordered Plaintiff terminated from matriculation in any scientifically-connected doctoral program in C.U.N.Y. This order was carried out by one or more of the individual defendants named herein who are employed by the municipality, through a falsification of examination scores, an arbitrary altering of the rules of the program as applied exclusively to Plaintiff, a falsification of academic evaluations, and attempts to prove the Plaintiff psychologically unfit for an academic career. The actions of these faculty members were further protected from discovery by Plaintiff through the complicity of all the municipal defendants herein to withhold testimony and documents from Plaintiff.

22. On information and belief, some or all of the municipal defendants herein are unable to give voluntary testimony without incurring serious charges from both BHE and federal agencies, and are hence extorted into silence, and further unlawfully extorted because the evidence they are withholding is evidence that incriminates federal and municipal employees. Only the Court can de-classify this information.

23. On information and belief, federal agencies continued to direct all academic institutions and scientific research programs to which Plaintiff made application in the period 1973 through the present ~~not~~ to hire or give matriculation to Plaintiff. Two institutions to which Plaintiff applied for doctoral studies and teaching positions are:

a. MASSACHUSETTS INSTITUTE OF TECHNOLOGY, Defendant, for matriculation in the doctoral program in Philosophy, in 1975 and again in 1976, and for all financial aid and teaching assistantships accompanying acceptance of her application as administered under the institution's affirmative action policies.

b. PRINCETON UNIVERSITY, Defendant, for matriculation in the doctoral program in the History and Philosophy of Science, in 1975 and again in 1976, and for all financial aid and teaching assistantships accompanying acceptance

of her application as administered under the institution's affirmative action policies.

24. On information and belief, both the Philosophy faculties of MIT and PRINCETON, accepted Plaintiff for matriculation both as a qualified applicant and as most qualified applicant under affirmative action, in 1975 and again in 1976.

25. On information and belief, federal agencies directed the administrations of both PRINCETON and MIT to reject Plaintiff's applications for matriculation and employment, in 1975 and in 1976, and the administrations of PRINCETON and MIT voluntarily complied, directing their faculties and admissions staff to send notices of rejection to Plaintiff.

26. On information and belief, the rejection of Plaintiff's application for matriculation both at PRINCETON and MIT resulted in violations of Titles IX and VI of the Federal Higher Education Act, because Plaintiff was the most qualified applicant under affirmative action and her rejection was an act of sex and race discrimination, not a legitimate and lawful act of exclusion.

27. On information and belief, both PRINCETON and MIT awarded matriculation and all accompanying fellowships, scholarships, and traineeships, to persons less qualified to receive them, and against the objections of their respective Philosophy faculties.

28. On information and belief, both PRINCETON and MIT voluntarily complied with an unlawful federal directive, and hence are conspiring with federal agencies and employees to interfere with Plaintiff's civil rights and her Constitutional rights, in violation of 42 U.S.C. Section 1985 and the First Amendment.

29. On information and belief, Defendants RICHARD KLEINDIENST, WILLIAM SAXBE, EDWARD H. LEVI, HENRY KISSINGER, have covered up and are continuing to cover up evidence of unlawful counterintelligence activity and federal harassment of persons who are members of the class action 75 Civ. 1773 (JG), to which Plaintiff alleges membership, and are hence conspiring to fail to prevent a conspiracy to interfere with the civil rights and Constitutional rights of Plaintiff by instructing their subordinates to give false information in response to Freedom of Information Act requests, and further to fail to investigate civil rights complaints brought by these persons through the Equal Employment Opportunity Commission, wherein Plaintiff's grievances were misprocessed.

30. On information and belief, Defendant MARY MOTHERSILL is withholding evidence of a conspiracy to interfere with Plaintiff's civil rights in education and employment which she obtained in the course of her investigation of Plaintiff's grievance against BHE, while Chairperson of the American Philosophical Association's Committee on the Status of Women in the Profession, and is thus also a party in a conspiracy to interfere with Plaintiff's civil rights.

31. On information and belief, Defendants ALFRED A. GIARDINO and ROBERT KIBBEE are alleged to be withholding evidence of a conspiracy to interfere with Plaintiff's civil rights in education and employment within C.U.N.Y. and are further engaged in active cover up of past acts of conspiracy in order to avoid public exposure and political embarrassment.

32. On information and belief, Defendants DAVID NEWTON, HAROLD M. PROSHANSKY, HANS J. HILLERBRAND, ARNOLD KOSLOW, ABRAHAM EDEL, JULIUS ELIAS, GERALD MYERS, ANDREW J. McLAUGHLIN, JASON SAUNDERS, VIRGINIA HELD, PETER CAWS, RUDOLPH GREWE, C.S. HONG, ROBERTA THORNTON, NORMA REES, NAPHTHALI LEWIS, KURT SCHNELLER are alleged to be withholding evidence of a conspiracy to

interfere with Plaintiff's civil rights in order to avoid loss of employment, and/or research funding, and academic and professional blacklisting.

33. On information and belief, _____, alleged to be one or more of the defendants herein, is engaged in unlawful counterintelligence activities against United States citizens and performed acts which resulted in interfering with Plaintiff's civil rights and Constitutional rights, by keeping the activities of all the other municipal defendants under surveillance and reporting all failures to comply with federal instructions to superiors who in turn coerced RHE administrators to coerce, punish, or dismiss municipal employee who refused to cooperate fully with federal directives against Plaintiff.

34. On information and belief, the specific acts of cover up engaged in by the municipal defendants are in part enumerated below; to give a full account of the acts performed would be too lengthy:

- a. PETER CAWS, VIRGINIA HELD, JASON SAUNDERS, NORMA REES, RUDOLPH GREWE, NAPTHALI LEWIS, were administratively coerced into withholding or giving conflicting reports and/or academic opinions of Plaintiff. ROBERTA THORNTON.
- b. ARNOLD KOSLOW, ABRAHAM EDEL, GERALD MYERS, JULIUS ELIAS, / ANDREW J. McLAUGHLIN, C.S. HONG, KURT SCHMELLER, DAVID NEWTON, were administratively coerced into rearranging files, records, examination scores, academic evaluations of Plaintiff to conceal evidence of irregularities in the way Plaintiff was being treated as both doctoral student and college teacher within C.U.N.Y.
- c. HAROLD M. PROSHANSKY, HANS J. HILLERBRAND, KURT SCHMELLER were administratively coerced into not inspecting original records and files pertaining to Plaintiff's doctoral study and employment, and to misdirect all of Plaintiff's inquiries and grievance procedure appeals.
- d. ROBERT KIBBEE ignored Plaintiff's appeal in the grievance procedure on Plaintiff's academic grievance against The Graduate School, and further discouraged voluntary witnesses of Plaintiff's by making reparations to them for their grievances in return for signing agreements not to give voluntary testimony against RHE.
- e. ALFRED A. GIARDINO discriminated against Plaintiff by not conducting a personal investigation of Plaintiff's charges, which he did do on various other occasions for other faculty at C.U.N.Y., in violation of affirmative action guidelines and union contract.

FIRST CAUSE OF ACTION

35. Determination by the Court in favor of Plaintiff in 75 Civ. 186 (EW), consolidated with the instant action, is a first cause of action in this action.

SECOND CAUSE OF ACTION

36. Determination by the Court in favor of Plaintiff in 75 Civ. 4913 (EW), consolidated with the instant action, is an alternate or second cause of action in this action.

THIRD CAUSE OF ACTION

37. That Plaintiff has been excluded and continues to be excluded from all federally-sponsored scientific research programs to which she has frequently applied and for which she is the best applicant violates 42 U.S.C. Section 1985

insofar as such exclusion is the result of an illegitimate classification of Plaintiff as an "Undesireable" or a "security risk," due to her race, creed, color, religion, national origin, or sex; and further also violates Title VII of the Civil Rights Act of 1964, as amended, and Titles IX and VI of the Federal Higher Education Act wherever applicable, and further violates the First Amendment wherever applicable.

FOURTH CAUSE OF ACTION

38. That Plaintiff has been denied matriculation, for which she was a best qualified applicant in 1975 and again in 1976, at PRINCETON UNIVERSITY, violates Titles IX and VI of the Federal Higher Education Act, and further violates 42 U.S.C. Section 1985 insofar as such denial was the result of federal intervention in PRINCETON admissions policies.

FIFTH CAUSE OF ACTION

39. That Plaintiff has been denied matriculation, for which she was a best qualified applicant in 1975 and 1976, at MASSACHUSETTS INSTITUTE OF TECHNOLOGY, violates Titles IX and VI of the Federal Higher Education Act, and further violates 42 U.S.C. Section 1985 insofar as such denial was the result of federal intervention in MIT admissions policies.

SIXTH CAUSE OF ACTION

40. That persons less qualified than Plaintiff were admitted to matriculation in the History and Philosophy of Science Program at PRINCETON in the successive academic years 1975/76, 1976/77, violates Titles IX and VI of the Federal Higher Education Act and Title VII of the Civil Rights Acts of 1964, as amended, wherever such admission was accompanied by teaching appointments.

SEVENTH CAUSE OF ACTION.

41. That persons less qualified than Plaintiff were admitted to matriculation in the Philosophy doctoral program at MIT in the successive academic years 1975/76 and 1976/77 violates Titles IX and VI of the Federal Higher Education Act and Title VII of the Civil Rights Act of 1964, as amended, wherever such admission was accompanied by teaching employment.

EIGHTH CAUSE OF ACTION

42. That federal agencies prevented MARY MOTHERSILL from performing her proper duties as Chairperson of the American Philosophical Association's Committee on the Status of Women in the Professions, by preventing her from revealing to Plaintiff the real reasons for her loss of matriculation at C.U.N.Y. and the real reasons for her nonreappointment as college teacher at C.U.N.Y., violates 42 U.S.C. Section 1985, Title VII of the Civil Rights Act of 1964, as amended, and Titles IX and VI of the Federal Higher Education Act.

NINTH CAUSE OF ACTION

43. Alternately or concurrently, that BHE prevented MARY MOTHERSILL from investigating Plaintiff's labor-retaliation grievance on behalf of the American Philosophical Association, and further instructed BHE faculty and staff to disseminate false and damaging information regarding Plaintiff to Professor MOTHERSILL to be withheld from Plaintiff in "strictest confidence," violates Title VII of the Civil Rights Acts of 1964, as amended, and is an act which is part of a conspiracy violating 42 U.S.C. Section 1985, and the First Amendment.

TENTH CAUSE OF ACTION

44. Alternately or concurrently, that one or more of the individual defendants herein, RICHARD KEEINDIENST, WILLIAM SAXBE, EDWARD H. LEVI, HENRY KISSINGER, ALFRED A. GIARDINO, ROBERT J. KIBBEE, DAVID NEWTON, HAROLD M. PROSHANSKY, HANS J. HILLERBRAND, ARNOLD KOSLOW, ABRAHAM EDEL, JULIUS ELIAS, GERALD MYERS, ANDREW J. McLAUGHLIN, JASON SAUNDERS, VIRGINIA HELD, PETER CAWS, RUDOLPH GREWE, C.S. HONG, ROBERTA THORNTON, NORMA REES, NAPHTHALI LEWIS, KURT SCHMELLER, or one of their subordinates acting on their instructions, prevented Professor MOTHERSILL from investigating Plaintiff's labor-retaliation grievance, on behalf of the American Philosophical Association and further disseminated false and damaging information regarding Plaintiff to Professor MOTHERSILL to be withheld from Plaintiff in "strictest confidence," violates Title VII of the Civil Rights Act of 1964, as amended, and is an act which is part of a conspiracy violating 42 U.S.C. Section 1985 and the First Amendment.

ELEVENTH CAUSE OF ACTION

45. That federal agencies caused _____, being one or more of the individual defendants herein, to engage in unreasonable and unreasonably prolonged and indecently conducted counterintelligence activities against Plaintiff, a United States citizen; both within the United States and on foreign soil; and coerced the assistance and complicity of members of the Armed Forces and resident aliens; to the detriment of Plaintiff's professional career and the advantage of foreign governments and in violation of Plaintiff's Constitutional rights under the First, Third, Fourth, Fifth, and Ninth Amendments, and 42 U.S.C. Section 1985; and is further an act subversive of the Constitution and our democratic institutions and armed services; is an act which forms part of an international conspiracy to interfere with Plaintiff's civil rights and is hence an act of treason against a United States citizen; and class of citizens. as represented in Halkin, et al., -v- Helms, et al.

TWELFTH CAUSE OF ACTION

46. That individual defendants RICHARD KLEINDIENST, WILLIAM SAXBE, EDWARD H. LEVI, HENRY KISSINGER, MARY MOTHERSILL, ALFRED A. GIARDINO, ROBERT J. KIBBEE, DAVID NEWTON, HAROLD M. PROSHANSKY, HANS J. HILLERBRAND, ARNOLD KOSLOW, ABRAHAM EDEL, JULIUS ELIAS, GERALD MYERS, ANDREW J. McLAUGHLIN, JASON SAUNDERS, VIRGINIA HELD, PETER CAWS, RUDOLPH GREWE, C.S. HONG, ROBERTA THORNTON, NORMA REES, NAPHTHALI LEWIS, KURT SCHMELLER, are each and every one of them withholding evidence and testimony of unlawful federal and/or municipal interference with Plaintiff's academic and/or professional career and right to equal opportunity in both education and employment, is an act which forms part of a conspiracy to interfere with Plaintiff's civil rights under 42 U.S.C. Section 1985, the Civil Rights Act of 1964, as amended, the Federal Higher Education Act, and the First Amendment.

WHEREFORE, Plaintiff requests that the Court grant the following relief:

A. A declaratory judgment that the course of conduct and activities of the defendants set forth above are illegal and unconstitutional.

B. A default judgment against MARY MOTHERSILL, who has been properly served by the U.S. Marshall on November 18, 1975 and has failed to answer to the summons and complaint.

C. That the Court immediately remand to a Grand Jury those issues the investigation of which might imperil the lives of any persons who are parties herein or in any of the other actions consolidated with this action.

D. A mandatory injunction or writ of mandamus ordering the Defendants

to produce before the Court for delivery to Plaintiff all files, reports, records, photographs, data computer tapes and cards, and all other materials derived from Defendants' illegal and unconstitutional activities relating to Plaintiff or any of her immediate co-workers, teachers, friends, union and/or professional association representatives, for the purpose of use at trial and before a Grand Jury.

E. The sum of \$1,000,000 for professional losses suffered by Plaintiff as a result of loss of back salary, research fellowships, teaching appointments, publishing rights, due to blacklisting and harassment by defendants or their subordinates, or due directly to discrimination in employment and education.

F. A judgment against each defendant in a sum to be determined by the Court for violation of Plaintiff's civil rights and Constitutional rights.

G. Recovery in the amount of \$4,000,000 in punitive damages for the willful violation of Plaintiff's civil and Constitutional rights.

H. Such other and further relief as the Court shall deem just and proper.

New York : New York

Respectfully submitted:

Dated April 3, 1976

ANNA SELMA VINJE MORPURGO, pro se
Box 1091, Sag Harbor, NY 11963
(516) 725 1414

TO: Clerk of Court

Mr. Nathaniel L. Gerber, Esq., Attorney for
Richard Kleindienst, William Saxbe, Edward H. Levi, Henry Kissinger,
_____, and UNITED STATES OF AMERICA.

Ms. Rosemary Carroll, Esq., Attorney for
Alfred A. Giardino, Robert J. Kibbee, David Newton, Harold M. Proshansky,
Hans J. Hillerbrand, Arnold Koslow, Abraham Edel, Julius Elias,
Gerald Myers, Andrew J. McLaughlin, Jason Saunders, Virginia Held,
Peter Caws, Rudolph Grewe, C.S. Hong, Roberta Thornton, Norma Rees,
Naphthali Lewis, Kurt Schmeller, and BOARD OF HIGHER EDUCATION N.Y.C.

Mr. Robert G. Desmond, Esq., Attorney for
MASSACHUSETTS INSTITUTE OF TECHNOLOGY

Mr. Ronald S. Herzog, Esq., Attorney for
PRINCETON UNIVERSITY

Professor Mary Mothersill, 250 Riverside Drive, New York 10025; Paul's Lane,
Bridgehampton, NY 11932; Philosophy Department, Barnard College of
Columbia University, New York, NY 10027.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ANNA SELMA VINJE MORPURGO,

-vs-

UNITED STATES OF AMERICA, ET AL.

-----X United States District Court
For the Southern District of
New York

Case No. 75 Civil 3840

Judge E. WEINFELD

-----X
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CIVIL DOCKET
UNITED STATES DISTRICT COURT

Pltff Jury demand date:
10-3-75

JUDGE WEINFELD
75 CIV. 3840

D. C. Form No. 106 Rev.

208-1 75 3840 08 06 75 12 440 1 5,000.

TITLE OF CASE

MORPURGO, ANNA SELMA VINJE ~~et al~~

ATTORNEYS

0849

For plaintiff:

Pro Se

Box 1091 Sag Harbor, N.Y. 11961

def. Princeton U.:

Jackson Nash Trophy, Barrington

Brooks, 350 E. 1st Ave., NYC

of counsel Robert S. Peruch

Jeff. T. Thorsen III:

Michael E. Zukarey

30 Rockefeller Plaza NYC

9/8/76 amended:

Yes.

UNITED STATES OF AMERICA,
BOARD OF HIGHER EDUCATION N.Y.C.,
MASSACHUSETTS INSTITUTE OF TECHNOLOGY,
PRINCETON UNIVERSITY,

For defendant: ~~Pro Se~~ ~~Defendant~~

Asst U.S. Atty. Gen.

One St. Andrews

MURKIN. Defs

2N)

Robert C. Deamond

CRISB.

Depositions

CHILD OF THE COURT

EXHIBIT 2-C

ANNA SELMA VINJE MORPURGO Vs. THE UNITED STATES OF AMERICA, et. al.

(1)

JUDGE WEINFELD

75 CIV. 3840

DATE	PROCEEDINGS	Date Order or Judgment Noted
08-06-75	Filed order permitting plttf. to proceed in forma pauperis. (EDELSTEIN J.)	
08-06-75	Filed complt. and issued summons.	
8-20-75	Filed summons & Marshal's returns. Served:	
	Edward M. Levi By Cert. Mail #285192 8-14-75	
	Henry Kissinger " #285191 "	
	U.S.A. " #285189 "	
	Richard Kleindienst " #285190 "	
	William Saxbe " #285193 "	
9-19-75	Filed Deft. Princeton University's Notice of Motion for an order directing the plttf. to furnish a more particular statement....ret 10-10-75 at 10 AM Rm 1903.	
9-19-75	Filed Deft's Memo of Law in support of its motion for a more particular statement.	
9-23-75	Filed Memo-End on back of Motion fld. 9-19-75....Referred to Mag. Raby for review & Recommendation....Lasker, J.	
9-28-75	Filed Stip & Order that the time for deft to answer the complt is ext to 9-18-75.Lasker, J.	
9-30-75	Filed plttfs affdvt & notice of motion for an order to rescind referral to the Magistrate & to consolidate with 75 Civ 186 presently with J. Weinfeld, & to dismiss motion of 9-18-75 by deft Princeton U. Ret. 10-10-75	
10-3-75	Filed Plttf's First Reply & Demand for Jury Trial.	
10-8-75	Filed Deft. Princeton University's Reply affdvant in support of its motion for a more definite statement.	
10-20-75	Filed Federal Defts' ANSWER.	USA
10-21-75	Filed Municipal Defts' ANSWER.	NYC
10-22-75	Filed Report of Mag. Raby dated 10-22-75. (Lasker, J. v. 22)	
10-22-75	Filed USA DEFTS' AMENDED ANSWER.	USA
10-21-75	Filed Plttf's Reply to Govt's Answer.	Pro-Se.
10-24-75	Filed Memo End on back of motion fld 9-30-75....The motion is granted to the extent that the case is transferred to the Hon. Edward Weinfeld. It is so Ordered....Lasker, J.	

10-28-75	Filed Pltff's Objection pur to Rule 53(a)(2) FRCP.	
10-28-75	Filed Pltff's Suppl. reply to def't's answer(amended) of 1-21-75.	Pro-Se.
10-29-75	Filed Petition by pltif for a U.S. Atty to assist in preparation of case for trial.....(fld in 15 C 106 MI)	
10-29-75	Filed notice of reassignment to Judge Weinfeld,. m/n	
11-05-75	Filed defts. affdvt. and notice of motion for an order pursuant to rule 12 (b) dismissing the complaint ret. 11-18-75	
11-05-75	Filed defts. memorandum in support of above motion to dismiss	
11-18-75	Filed stip. and order ext. def't. Massachusetts Institute of Technology time to answer to 12-1-75, upon the approval of Judge Weinfeld, J.	
11-20-75	Filed pltf. affdvt. in opposition to the U.S. Atty's motion to dismiss the complaint	
12-03-75	Filed stip. and order in the event def't Princeton Univ. motion for a more definite statement is denied, the def. Mass. Instt. of Tech. shall answer with respect to the complaint within ten days after entry of the decision or order denying the motion. In the event the motion by the def't Princeton Univ. is granted the def't. Mass shall answer with respect to the amended complaint within ten days after service of the amended complaint --Weinfeld, J.	
12-04-75	Filed def't. Mass. Institute of Technology ANSWER and demands for jury trial	
12-31-75	Filed Memorandum #43652 The court grants the motion to dismiss for failure to state a claim as to all defts, but with leave to the pltf to serve an amended complaint in compliance with the rules within twenty days from the date hereof. --Weinfeld, J.	
01-06-75	Filed memo. end. on demand for jury trial filed 10-3-75 The motion is denied --- --Weinfeld, J. m/n by pro-se	

cont'd p. 2

B

Clerk of the Court

SOUTHERN DISTRICT OF NEW YORK

-----X
ANNA SELMA VINJE MORPURGO,
Plaintiff,:

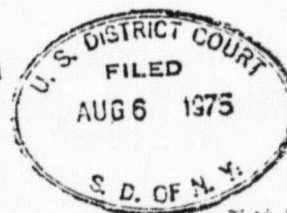
-v-

THE UNITED STATES OF AMERICA,;
BOARD OF HIGHER EDUCATION OF
CITY OF NEW YORK, MASSACHU-
SETTS INSTITUTE OF TECHNOLO-
GY, PRINCETON UNIVERSITY, and
RICHARD KLEINDIENST, WILLIAM
SAXRE, EDWARD H. LEVI, HENRY
KISSINGER, and ALFRED A.
GIARDINO, ROBERT J. KIBBEE,
DAVID NEWTON, HAROLD M. PRO-
SHANSKY, HANS J. HILLERBRAND,
ARNOLD KOSLOW, ABRAHAM EDEL,
JULIUS ELIAS, GERALD MYERS,
ANDREW J. McLAUGHLIN, JASON
SAUNDERS, VIRGINIA HELD,
PETER CAWS, RUDOLPH GREWE,
MARY MOTHERSILL, C.S. HONG,
ROBERTA THORNTON, NORMA REES,
NAPHTHALI LEWIS, KURT SCHMELLER,
Defendants.

-----X

NOTICE OF CIVIL ACTION
Pro Se

(JUSTICE E. WEINFELD)



Weinfeld
AM

75 CIV. 3840

(1) Plaintiff charges a conspiracy between employees of the United States Government and employees and corporate entities of Board of Higher Education of City of New York, Princeton University, and Massachusetts Institute of Technology, to deprive Plaintiff of her civil rights under Titles VI and IX of the Federal Higher Education Act, and the First, Fifth, and Fourteenth Amendments of the United States Constitution, and in violation of Federal Oath of Office to protect all citizens equally under the law.

(2) Against the Defendant, United States of America, Plaintiff further charges extortion of United States Citizens who have broken its laws, to retaliate against Plaintiff who has broken none of its laws, for her civil rights and civil liberties activities; and further charges extortion of non-United States Citizens to engage in espionage and retaliation against Plaintiff, a United States Citizen, in conspiracy with foreign governments to abridge and deny Plaintiff her Constitutional rights; and further charges use of Armed Forces Personnel, not in uniform, to retaliate and spy upon Plaintiff, who is a loyal United States Citizen; and further charges discrimination against Plaintiff in Justice Department, Equal Employment Opportunity Commission, and other federal agencies, in the investigation of her grievances against Board of Higher Education of City of New York, Princeton University, Massachusetts Institute of Technology, and the individual Defendants named herein.

(3) Against the Defendants, Princeton University and Massachusetts Institute of Technology, Plaintiff charges violations of Titles VI and IX in application for admission to their respective doctoral programs in Philosophy beginning the academic year Fall 1975.

U.S. OF AMERICA

ADDITIONAL ATTY'S SHEET

75 CIV 3840

D. C. 110 Rev. Civil Docket Continuation

[illegible]

[illegible]

Clerk of the Court

75 CIV 3840 EW

Anna Selma Vinje MCPURLO v. USA, et.al.

page 2

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Order or Judgment Noted
01-19-76	Filed plaintiffs first interrogatory	
01-19-76	Filed AMENDED COMPLAINT with receipts on back (US Attorney, Attorneys for Princeton University, Attorneys for M.I.T.) with letter to Judge Weinfeld attached - re service.	
01-29-76	Filed ANSWER of deft. Princeton University	JNBB&B
01-29-76	Filed ANSWER of defts United States of America	THC
02-03-76	Filed ANSWER of deft. Mass. Institute of Technology	WLM
01-29-76	Filed ANSWER of deft. Municipal defts	W.B.B. re:
02-17-76	Filed pltf. Amended Complaint and notice of motion for a default judgment pursuant rule 55 ret. 2-24-76 (all under one cover)	
02-17-76	Filed pltf. motion to compel return of interrog under rule 33 ret. 2-24-76	
02-17-76	Filed pltf. notice of motion to compel discovery under rule 34 ret. 2-24-76	
03-01-76	Filed deft. Mass. Institute of Technology notice of motion for judgment on the pleadings pursuant to rule 12(c) ret. 3-9-76.	
02-24-76	Filed summons with marshals return served--	
	Rudolph Greve --unable to serve	
	Princeton, NJ on 8-12-75	
	Abraham Edel on 8-12-75	
	Harold M. Proshansky by A. Wilhorwal on 8-3-75	
	Hans J. Hillerbrand by Dorothy Weber on 8-13-75	
	Norma Rees by Dorothy Weber on 8-13-75	
	Roberta Thornton by Dr. Roberta Thornton on 8-12-75	
	Kurt Schemeller on 8-12-75	
	C.S. Hong on 8-12-75	
	Robert J. Kibbee by Mary Bass on 8-21-75	
	Board of Higher Education of NYC by M. Bass on 8-21-75	
	Alfred A. Giardino by Mary Bass on 8-21-75	
	Arnold Koslow by A. Koslow on 8-12-75	
	Gerald Myers by Gerald Myers on 8-12-75	
	David Newton by Newton on 9-18-75	

	C.S. Hong on 9-24-75
	Kurt Schmeller on 9-24-75
	Mass. Institute of Technology on 10-21-75
	Peter Caws --unable to serve
	Naphall Lewis on 9-30-75
	Jason Saunders on 10-3-75
	Mary Motherwill 11-18-75
	Virginia Held---unable to serve
	Rudolph Grewe by Rudolph Grewe on 12-27-75
	Peter Caws by Mr. Corwin on 12-26-75
	Julius Elias--unable to serve
	Andrew J. McLaughlin --unable to serve
03-17-76	Filed memorandum in support of motion by deft. Mass. I.T. for judgment on the pleadings.
03-17-76	Filed affdvt. of Ronald S. Herzog on behalf of Princeton University.
03-17-76	Filed pltf's motion and affdvt. in opposition to motion by M.I.T. for judgment on the pleadings. - ret. 3-9-76
3-17-76	Filed memo endorsed on deft. M.I.T.'s motion filed on 3-1-76: The motion to dismiss the complaint in 75-3840 as against MIT and Princeton in 75-4913 as against the named employees of the EEOC are granted. Plaintiff, if she so desires, will be given one more opportunity in both actions to allege facts that would entitle her to relief against these defendants, failing which the complaints will be dismissed with prejudice. The amended complaint, if any, is to be served within 20 days from this date. - Weinfeld, J. m/n and m/n to pltf. by pro-se Clerk.

e.

CLERK OF THE COURT

CIV 3840 EW
 Corpuzo v. USA, et.al.

page 3

DATE	PROCEEDINGS	Date Order or Judgment Note
07-08-76	Filed 2nd AMENDED COMPLAINT. (affdvt. of service attached)	
04-13-76	Filed Marshals returns - served: 2nd amended complaint Mary Mothersill on 4-8-76 Prof. Rudolph Grewe - not served, returned for better address.	
04-23-76	Prof. Virginia Held - not served, returned for better address. Filed stip. and order ext. defts time to answer 2nd amended complaint	
04-25-76	to 4-23-76. -- Weinfeld, J. Filed ANSWER of deft. Princeton University	
04-23-76	Filed ANSWER of defts' USA, Edward H. Levi and Henry Kissinger to 2nd amended complaint.	JTB&B
04-26-76	Filed deft. M.I.T.'s ANSWER to 2nd amended complaint.	US Atty.
04-29-76	Filed by deft. Mary Mothersill notice of motion to dismiss 2nd amended complaint. - ret. 5-11-76	
04-29-76	Filed deft. Mothersill's memorandum in support of motion to dismiss.	
05-05-76	Filed pltf's affdvt. in opposition to motion to dismiss by deft. Mothersill.	
05-05-76	Filed reply memorandum in support of motion by the deft. Mary Mothersill to dismiss the 2nd amended complaint.	
06-15-76	Filed request to M.I.T. and Princeton for production of documents and return of interrog. (ptf's request)	
06-26-76	Filed deft. USA's notice of motion to dismiss 2nd amended complaint. - ret. 7-6-76	
06-24-76	Filed deft. USA's memorandum in support of above motion be federal defts to dismiss.	
07-02-76	Filed memorandum in support of motion by Princeton-U. to dismiss the amended complaint.	
7-20-76	Filed p.tfs. opposition and notice of in camera submission re: on: July 20, 1976. (filed in 75 Civ. 186-EW)	
11-18-76	Filed one envelope of documents ordered SEALED AND IMPOUNDED in	

Cashier's vault. To be unsealed only upon order of the Court, --
Weinfeld, J. (cashiers vault)

11-18-76 Filed OPINION #45374... (re actions 75 Civ 186, 75 Civ 3840 and
75 Civ 4913) The complaints are dismissed against all defendants
in all actions except as to the defendants Edel, Newton, Kibbee
Koslow, Myers, Elias, Thornton, Hong, McLaughlin, Froshansky and
Hillerbrand in actions 75 Civ 3840 and 75 Civ 4913. -- Weinfeld, J.
(filed in 75 Civ 186) m/n

11-22-76 Filed deft. Princeton University memorandum of law.

11-22-76 Filed Fed. defts memorandum in support of motion to dismiss.

11-22-76 Filed deft. Princeton University reply affdvt.

11-22-76 Filed deft. Princeton University affdvt. in opposition pltf's mot.
pursuant to Rule 37(a)

11-22-76 Filed original report of Magistrate Raby dated 10-22-75

11-22-76 Filed on behalf of MIT affdvt. of Robert G. Desmon.

12-01-76 Filed Judgment and order dismissing action as to all defendants
except Abraham Edel, David Newton, Robert J. Kibbee, Arnold Koslow,
Gerald Myers, Harold H. Froshansky and Hans J. Hillerbrand, Elias, Thorn-
(filed in 75 Civ 186) ton, Hong, McLaughlin -- CLERK.

12-01-76 Filed pltf's notice of submission of interrog. and request for
disclosure of documents from municipal defendants.

12-14-76 Filed pltf's motion to reargue re opinion #45374 with memo endorsed;
The motion for leave to reargue is denied, etc. -- Weinfeld, J.
(filed in 75 Civ 186 EV) -- m/n and copy mailed to pltf. pro-se.

Cont'd on Page #4

CD

CLERK OF THE COURT

CIVIL DOCKET CONTINUATION SHEET

Weinfeld, J.

PLAINTIFF		DEFENDANT	DOCKET NO. 75-3840
MORPURGO		USA, et.al.	PAGE 7 OF 7 PAGES
DATE	NR.	PROCEEDINGS	
12-22-76	---	Filed plaintiffs affdvt. with notice of appeal and motion to consolidate cases for appeal.	
12-22-76	---	Filed memo endorsed on above: The Court has no objection to pltf. pursuing her appeal in forma pauperis. It should be noted however that judgment has only be entered in 75 CIV 186: Both 75 Civ 3840 and 75 CIV 4913 continue with respect to a number of undismissed defendants. Plaintiff may <u>not</u> therefore "consolidate" 75 Civ 3340 and 75 Civ 4913 with 75 Civ 186 when she appeals. -- Weinfeld, J. mailed copy to plaintiff (Filed in 75 Civ 186)	
12-30-76	==	Filed plaintiffs jury demand.	
01-17-77		Filed Municipal deft's answers to pltf's interrog's	
01-17-77		Filed Deft's responses to pltf's notice for disclosure of documents dated 11-30-76	
01-18-77	-----	Filed deft. Princeton affdvt. in opposition to pltf's petition for an injunction pending Appeal an motion to compel discovery and return interrog.	
01-18-77		Filed unsigned Order dated 1-10-77	
01-19-77		Filed plaintiffs notice of opposition to settlement and petition for an injunction pending appeal and for a stay in judgment and motion to compel discovery and return of interrog. - ret. 01-18-77	
01-19-77		Filed memo endorsed on above notice: Pltfs motion to compel discovery and return interrog. is denied. Pltfs cross-motion in opposition to settlement is denied as moot. -- Weinfeld, J. m/n and copy mailed to pltf., pro-se.	

02-01-77	Filed Municipal defendants notice of motion for summary judgment. - ret. 03-01-77
02-01-77	Filed Municipal defendants statement pur. to Rule 9(g) in support of motion for summary judgment.
02-01-77	Filed Municipal defendants memorandum of law in support of motion for summary judgment. P.T.
02-04-77	Filed plaintiff's/brief and memorandum against the "Municipal defendant"
03-01-77	Filed deft's pre-trial memorandum.
03-01-77	Filed deft's proposed jury instructions.
4-5-77	Filed True Copy of Mandate from the USCA that appellant's motion is denied in all cases, the appeal ent. in 75 Civ 186 from the judgment is dismissed, & the appeal from the order ent. in 75 Civ 3840 & 75 Civ 4913 is dismissed without prejudice to renewal once the district court has rendered a final judgment as to all defts in those two suits. Clerk. n/m & copy of order sent to plttf by Dkt. Clerk. (Filed in 75 Civ 186)
5-25-77	Filed (deft (Corp. Counsel's) affdvt requesting adj. to 5-17-77 on plttfs motion for discovery.

DC-111A REV. (1/78)

Chapman T. Bryant
Clerk of the Court

CIVIL DOCKET CONTINUATION SHEET

WEINFELD, J.

PLAINTIFF

ANNA SELMA VINJE MORPURGO

DEFENDANT

USA, ED. OF ED., et al

75-3840

DOCKET NO.

PAGE 5 OF 5 PAGES

DATE	NR.	PROCEEDINGS
7-27-77		Filed notice of motion for a judgment pursuant to Rule 37 (a) (3) of the FRCP (also ent in 75-4913) Ret 5-3-77
7-27-77		Filed notice of motion under Rule 37 (b)(2)(a) of the FRCP & petition for an injunction against BHE Corporate Deft (also ent in 75-4913) Ret 3-8-77
7-27-77		Filed plttf's notice of petation to amend the opinion dated Nov. 18, 1976 by the Hon. E. Winfeld on grounds of new evidence ret 5-3-77
7-27-77		Filed plttf's notice of motion under Rule 37 (b) (2) (B) & (a) (3) of the FRCP against Municipal deft's ret 5-3-77 (also ent in 75-4913)
7-27-77		Filed order to show cause against Municipal deft's for immediate production of documents on the 15th day of March 1977 ...WEINFELD, J. (also ent in 75-4913)
7-27-77		Filed deft's municipal affid in opposition to motion for a judgment pursuant to Rule 37 (a) (3) of the FRCP 7 in support of a protective order barring further motions for discovery
7-27-77		Filed municipal deft's affid in opposition to motion to amend Courts opinion of Nov. 8, 1976 (also ent in 75-4913)
7-27-77		Filed Municipal deft's affid in opposition to plttf's motion under Rule 37 (b) (2) (B) & (a) (3) of the FRCP (also ent in 75-4913)
7-27-77		Filed affid in opposition to plttf's motion (also ent in 75-4913)
7-27-77		Filed plttf's affid of failure to complete discovery ordered by Court under Rule 37 (a) (3) FRCP (also ent in 75-4913)
7-27-77		Filed plttf's opposition to deft's motion for summary judgment (the Municipal deft's) (also ent in 75-4913) DEMAND FOR A JURY TRIAL
7-27-77		Filed deft's affid in support of deft's request that that plttf's motion for discovery, ret on March 9, 1977, be adj until March 15, 1977 (also ent in 75-4913)
7-27-77		Filed plttf's notice of objection to the manner of these proceedings as prejudicial against plttf (also ent in 75-4913)
7-27-77		Filed plttf's replying affid to deft's affid of 27 May 1977 (also ent in 75-4913)
7-27-77		Filed Plttf's notice of objection to deft's belated new affid of 16 June 1977 (also ent in 75-4913)

7-27-77

7-27-77

7-27-77

Filed deft's findings of fact (also ent in 75-4913)
Filed schedule of new evidence presented to Juuge Weinfeld postdating res Judicita
in the NYSSC /NYC proceedings against Muniwipal Deft's (also ent in 75-4913)

Filed Opinion #46216 & Order that the only claims advanced in plttfs
amended complts that have survived motions to dismiss & motions for
summary judgment made by various defts are that the City defts
violated plttfs rights to due process in connection with the decision
not to reappoint her as a lecturer at Queensborough Community College,
& the decision not to allow her to continue in the doctoral program in
philosophy at the City University of N.Y. For the reasons stated,
the defts motion for summary judgment is granted re plttfs claim
she was denied due process when not rehired as a lecturer, & defts
motion for summary judgment on plttf claim she was denied due process wh
when dropped from the doctoral program. The Only outstanding claims
in 75 Civ 3840 & 75 Civ 4913 were those against the City defts.
Resolution of the instant motion disposes of these claims, & judg-
ment may now be entered in favor of the City defts as well as the
remaining defts in 75 Civ 3840 & 75 Civ 4913, who previously obtained
orders granting summary judgment or dismissing plttfs complt.....
So Ordered, WEINFELD, J. n/m & copy sent to plttf by Dkt. Clerk.

Cont'd on Page 6

DC-111A REV. (1/75)

2

WEINFELD, J.

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 75 -3840
ANNA SELMA VINJE MORPURGO	U.S.A., et al	PAGE 6 OF PAGES

DATE	NR.	PROCEEDINGS
8-2-77		Filed Judgment & Order that debts U.S.A., et al have judgment against plttf dismissing the complt in 75 Civ 3840 & 75 Civ 4913. Ordered, that debts Professional Staff Congress/CUNY (PSC), et al, have judgment against plttf dismissing the complt in 75 Civ 4913....Clerk. n/m & copy of Judgment & Order sent to plttff by Dkt. Clerk.
08-15-77		Filed Municipal debts affvdt. in opposition to ptlf's motion pursuant to rule for relief from the judgment of this Court
08-24-77		Filed pltf's memorandum nad notice fo motion for relief form judgment under rule 60 (b) (1). With memo. and.. The motion is denied--Weinfeld, J. m/n (filed in 76-186
9-1-77		Filed plttfs notice of appeal to the USCA to consolidate actions #75 Civ 3840 & 75 Civ 4913. Opinions & Judgment of the USDC #45374 & 46216 which dismissed all parts of her complts. Copies sent to: D. Nicholas Russo, Professional Staff Congress/CUNY 25 W. 43rd St. New York, N.Y. 10036 - Anthony M. Lanzone & Associates (Edwin L. Smith, of Counsel - 26 B'way, New York, N.Y. 10004 - Michael C. McGoings, NEOC, 2401 E. St. NW, Washington, D.C. 20506 (By Mail) -& W. Bernard Richland, Corporat on Counsel, Municipal Bldg., New York, N.Y. 10007 - Robert B. Fiske, Jr., U.S. Attorney, SDNY, 1 St. Andrews Plaza, New York, N.Y. 10007 - Wein Lane & Malkin, 60 E. 42nd St., New York, N.Y. 10017 - Jackson Nash Brophy Barringer & Brooks, 330 Madison Ave., New York, N.Y. 10017
9-26-77		Filed Memo-End. Leave to appeal in forma pauperis is granted. The time for filing a notice of appeal is ext. to 10-3-77....WEINFELD, J. n/m

DEPUTY CLERK

BY

RAYMOND E. BURCHMANN, CLERK

[Handwritten signature]

DC-111A REV. (1/75)

[Handwritten signature]
Clerk of the Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

ANNA SELMA VINJE MORPURGO,

-vs-

UNITED STATES OF AMERICA ET AL

CASE NO. 75 Civil 3840

JUDGE E. WEINFELD

CLERK'S CERTIFICATE

-----X

I, RAYMOND F. BERGMARDT, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the certified copy of docket entries lettered A- I, and the original filed papers numbered 1 thru 90, and exhibits _____, inclusive, constitute the record on appeal in the above entitled proceedings, except for the following missing documents:

DATE FILED

PROCEEDINGS

Several documents which are missing were filed in related cases. (75 Civil 186 & 75 Civil 4913).

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto
affixed, at the City of New York, in the Southern District of New York, this 6th
day of ~~XX~~ Oct. _____, in the year of our Lord, One thousand nine hundre
seventy seven, and of the Independence of the United States the 202nd year.

Raymond F. Berglund
Clerk of the Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ANNA SELMA VINJE MORPURGO,
Plaintiff,

-v-

PROFESSIONAL STAFF CONGRESS/CUNY (PSC)
VLADECK ELIAS VLADECK & LEWIS (VLADECK)
BOARD OF HIGHER EDUCATION N.Y.C. (BHE)
and
JUDITH P. VLADECK, ANTHONY DE MEALAS,
ABRAHAM EDEL, DAVID NEWTON, ROBERT KIBBEE,
ARTHUR W. STERN, FREDDIE G. HOLT,
RALPH MUNOZ, VINCENT DONATO, KASINE WALKER,
AL KERSEY, MAXINE ARCHER, THOMAS W. BARRON,
and
JOHN/JANE DOE,
Defendants.

75 Civ. 4913 (EW), Pro Se

FIRST AMENDED COMPLAINT

Civil Action for Declaratory,
Injunctive, and Monetary
Relief

-----X
Plaintiff, pro se, alleges as follows for her First Amended Complaint:

JURISDICTION

1. This is a civil action for declaratory and injunctive relief and money damages arising under various sections of the Civil Rights Acts including Title VII of the Civil Rights Act of 1964 as amended, and 42 U.S.C. Section 1985 (conspiracy and failure to prevent a conspiracy to interfere with civil rights), and the First Amendment of the Constitution.
2. This action proceeds from a Right-to-sue issued by the United States Department of Justice, on file with the Clerk of the Court.
3. A majority of the acts complained of occurred within the Southern District of New York.
4. Some of the defendants have their principal offices in the Southern District of New York.
5. The matter in controversy, exclusive of interests and costs, exceeds \$10,000.

PARTIES

6. Plaintiff: ANNA SELMA VINJE MORPURGO, Union Street, Sag Harbor, NY 11963, (516) 725 1414, formerly an adjunct lecturer employed by BHE.

7. Defendants:

a. PROFESSIONAL STAFF CONGRESS/CUNY, 25 West 43 Street, New York, NY 10036, collective bargaining unit of BHE, represented by Judith P. Vladeck, Esq. of Vladeck Elias Vladeck & Lewis.

b. VLADECK ELIAS VLADECK & LEWIS, 1501 Broadway, New York, NY 10036, occasionally attorneys for PSC and AFL/CIO, and for CUNY Women's Coalition.

c. BOARD OF HIGHER EDUCATION N.Y.C., 535 East 80 Street, New York, NY 10021, public corporation administering The City University of New York, is represented by Rosemary Carroll, Esq. of Office of Corporation Counsel N.Y.C.

d. JUDITH P. VLADECK, pro se, 1501 Broadway, New York, NY 10036.

e. ANTHONY DE MEALAS, former PSC grievance counselor, c/o Professional Staff Congress/CUNY, 25 West 43 Street, New York, NY 10036.

f. ABRAHAM EDEL, former Executive Officer of the Philosophy Doctoral Program at C.U.N.Y., is represented by Rosemary Carroll, Esq.

g. DAVID NEWTON, former Vice Chancellor of C.U.N.Y., is represented by

Exhibit 3-A

Rosemary Carroll, Esq.

h. ROBERT KIBBEE, Chancellor of C.U.N.Y., is represented by Rosemary Carroll, Esq.

i. ARTHUR W. STERN, formerly Director Regional Affairs, Downstate, for the New York State Division of Human Rights, and presently Director of the New York District Office of the Equal Employment Opportunity Commission, is represented by Michael C. McGoings, Esq., of the Equal Employment Opportunity Commission.

j. FREDDIE G. HOLT, formerly acting district director of the New York District Office of the E.E.O.C., is represented by Michael C. McGoings, Esq.

k. RALPH MUNOZ, Esq., is an employee of the E.E.O.C. NY District Office, and is represented by Michael C. McGoings, Esq.

l. VINCENT DONATO is an employee of the E.E.O.C. NY District Office, and is represented by Michael C. McGoings, Esq.

m. KASINE WALKER is an employee of the E.E.O.C. NY District Office, and is represented by Michael C. McGoings, Esq.

n. AL KERSEY is an employee of the E.E.O.C. NY District Office, and is represented by Michael C. McGoings, Esq.

[o. MAXINE ARCHER is a former employee of the E.E.O.C. NY District Office and is represented by Michael C. McGoings, Esq.

p. THOMAS W. BARRON, whose last disclosed address is c/o The Personnel Director, New York State Division of Human Rights, 270 Broadway, New York, NY 10007, is a former hearing officer for the New York State Division of Human Rights, Queens Office, Queens, New York, N.Y.

q. JOHN/JANE DOE are persons presently unknown to Plaintiff who also participated in the acts complained of.

r. All the foregoing individuals are sued in their individual capacities

s. Plaintiff has a subsequent action to the instant action, 75 Civ. 3840 (EW) in which some of the above-named defendants are also named, and in which the United States is being sued, for unlawful acts committed by federal officials and employees.

FACTS &
ALLEGATIONS

8. Plaintiff has publicly advocated integration, religious freedom, sexual equality, equal opportunity, nonaggression, and is a foreign-born United States citizen of ambiguous race, religion, ethnic origin, and sex, through self-proclamation as integrated, free thinker, nonethnic, and unisex. It is alleged that the protection of Title VII and other Civil Rights Statutes extend to all persons equally regardless of race, religion, ethnic origin, and sex, and hence extend also to Plaintiff and her class of ambiguous persons.

9. It is further alleged that militants and radicals of every faction discriminate and take violent action against members of Plaintiff's ambiguous class, and that each of these factions conspires, and sometimes co-conspires with some other faction(s) to interfere with Plaintiff's civil rights by grouping Plaintiff with classes of persons to which it is an opposite. Thus Plaintiff has been persecuted as "black," "gay," "atheist," "pacifist," "communist," "radical" by one or another of these elements among which are numbered the extremist organizations known as the Ku Klux Klan, violent Black, Gay, Catholic, Jewish, Italian, Nazi, Communist militants, and the communities which surround them and fall prey to their propaganda.

10. It is further alleged upon frequent information in the public press that significant segments of our national and international security network is

from time to time controlled by one or another of these radical elements, and that persons of Plaintiff's class have recently fallen prey to the unlawful misuse of our national and international security system.

11. Plaintiff claims membership in the class action presently before Judge June Greene, 75 Civ. 1773, U.S.D.C./ District of Columbia, Halkin et al. -v- Helms et al.; and alleges she suffered repeated intrusions of privacy due to improper counterintelligence actions and files, initiated by the New York Office of the Federal Bureau of Investigation sometime in 1967 and ultimately coordinated with the national Special Operations Group within the Central Intelligence Agency known as "Operation CHAOS."

12. In the instant action Plaintiff alleges that individuals employed by BHE, PSC, and New York State Division of Human Rights and the Equal Employment Opportunity Commission New York District Office acted unlawfully to cover up the damaging actions and other invasions of privacy earlier conducted, as described in 11 above, and that this was not a lawful and proper performance of their duties even upon instruction from superiors, and that some of these actions constitute counterintelligence actions against a United States citizen within the United States and are therefor also unconstitutional.

13. Plaintiff is a member of the class of women scholars employed by BHE and was for a time, in the period 1973, a member of CUNY Women's Coalition, and actively participated in research for the class action later brought by the Coalition against BHE through the VLADECK firm, which coordinated the investigation of complaints filed with the E.E.O.C. NY District Office. And Plaintiff also filed a complaint and was represented by the VLADECK firm at that time as a member of the intended class action.

14. Plaintiff's E.E.O.C. grievance was misplaced and misprocessed by persons responsible to Judith P. Vladeck, resulting in a crucial delay of some months and her exclusion from the initial group of cases to be immediately investigated by the E.E.O.C. and litigated in U.S.D.C./S.D.N.Y. This delay, coupled with further inefficiencies and improper advice, greatly damaged Plaintiff's ability to litigate effectively against BHE, and upon information and belief it is alleged that this delay was willful and part of a cover up conspiracy; the Court has pendant jurisdiction over this issue, under Title VII

15. In Spring/Summer 1972, Plaintiff was not rehired as college teacher by Queensborough Community College/C.U.N.Y. or any other division of C.U.N.Y., in violation of union contract, due to discrimination and cover up, and continued to be unlawfully excluded from rehiring programs within C.U.N.Y., due to discrimination and cover up, in violation of Title VII.

16. Plaintiff's representation by the PSC grievance counselor, Anthony DeMealas, at Arbitration before Arbitrator Milton Rubin in Summer 1973 was knowingly and willfully inadequate, in presentation of evidence, witnesses, presence of Plaintiff at all proceedings which was denied her, and in the bringing of sufficient charges against BHE; the issue of discrimination or of academic freedom was not brought before the Arbitrator, and this is a violation of Title VII and union contract.

17. The determination of lack of probable cause handed down by the Equal Employment Opportunity Commission on Plaintiff's various grievances filed in the period Fall 1973/Spring 1975, dated August 1, 1975, is in neglect of law and weight of evidence, and is further grossly inaccurate with regard to the statement of recorded facts, and handed down without obtaining testimony from Plaintiff's voluntary witnesses, and the Court has therefore jurisdiction to review all the evidence under Title VII.

18. On information and belief and the weight of recorded evidence and further circumstantial evidence, it is alleged that Arthur W. Stern and Thomas W. Barron of the New York State Division of Human Rights, and Arthur W. Stern (same party), Freddie G. Holt, Ralph Munoz, Vincent Donato, Kasine Walker, Al Kersey, Maxine Archer, John/Jane Doe, employees of the New York District Office of Equal Employment Opportunity Commission, conspired with John/Jane Doe, other federal employees or members of organized crime or friends of theirs to

whom they owe allegiance, to fail to prevent a conspiracy to interfere with Plaintiff's civil rights, in violation of both Title VII (interfering with an E.E.O.C. investigation and retaliation for filing an E.E.O.C. complaint), and 42 U.S.C. Section 1985, and other civil rights statutes, and other sections of the U.S.C. protecting Constitutional rights from federal transgressions.

19. On a number of occasions between 1973 and 1975, Chancellor Robert Kibbee or his direct subordinates have investigated and made reparations to persons able to give testimony for Plaintiff's grievances and caused these persons to sign a document preventing them from giving voluntary testimony against BHE, resulting in a suppression of voluntary testimony for Plaintiff.

20. On information and belief, David Newton, formerly a Vice Chancellor, assisted Robert Kibbee in cover up and discreditation of Plaintiff through acts which violated union contract, and the First Amendment.

21. A co-worker of Plaintiff's met a violent death in 1972 for reasons as yet not fully determined, which may have relevance to the explanation of the intensity of cover up of Plaintiff's grievances.

22. Plaintiff is also a co-researcher since 1964 with various groups engaged in behavior-modification research, including hallucinogenic research and electrode-implantation research for the control of violence and other neuro-physiological disorders; and upon information and belief came to be rejected for inclusion in criminology research for which academic sponsors had recommended her, as well as for other behavior-modification research; and the research programs in question have since been branded racist and fascist by some civil rights groups and have ceased to be funded by the National Institutes of Health; and some of this research has now been removed to foreign countries which are centers for training security personnel. Upon information and belief, some of Plaintiff's academic advisors are still connected with these projects.

23. On information and belief and record, Executive Officer Abraham Edel took a principal role in coordinating BHE and PSC and VLADECK cover up of Plaintiff's union grievances, and further also took part in the original conspiracy within Queensborough and the Graduate Center to interfere with Plaintiff's rights as college student and teacher to equal opportunity in education and employment, by (a) discouraging faculty from sponsoring or hiring Plaintiff, (b) by encouraging faculty to report on Plaintiff's litigation strategies, (c) by spreading rumors that Plaintiff was a militant and a poor student, (d) by withholding information and documents testifying to Plaintiff's academic and professional competence from Plaintiff's would-be sponsors and advisors.

FIRST CAUSE OF ACTION

24. Plaintiff's nonreappointment at Queensborough in 1972 violated her right to equal employment opportunity as protected by Title VII, two successive union contracts, and the First Amendment.

25. No res judicata from Arbitration exists on this issue.

SECOND CAUSE OF ACTION

26. Failure of PSC to charge discrimination and abridgement of academic freedom at Arbitration was an act of improper representation of Plaintiff due to discrimination, also forbidden under Title VII and union contract, and further was part of a conspiracy to interfere with Plaintiff's civil rights, and also part of a conspiracy to interfere with her union activities forbidden by the Taylor Law and the National Labor Relations Act.

THIRD CAUSE OF ACTION

27. Failure of the VLADECK firm to give Plaintiff proper representation was an act of malpractice over which the Court has pendant jurisdiction, and was part of a conspiracy to interfere with Plaintiff's civil rights.

FOURTH CAUSE OF ACTION

28. The Court has a right under Title VII to review the determination of August 1, 1975 by the Equal Employment Opportunity Commission which was arrived at in neglect of law and weight of evidence and with further gross negligence in the collection and examination of facts, records and testimony; a right-to-sue from the Justice Department is on file with the Clerk of the Court.

FIFTH CAUSE OF ACTION

29. The voluntary acts of Defendants Judith P. Vladeck, Anthony DeMealas, Abraham Edel, David Newton, Robert Kibbee, Arthur W. Stern, Freddie G. Holt, Ralph Munoz, Vincent Donato, Kasine Walker, Al Kersey, Maxine Archer, Thomas W. Barron, John/Jane Doe, done directly to suppress evidence, discourage, bribe, or otherwise prevent witnesses from testifying for Plaintiff, to alter or misplace records, neglect professional duties and their timely performance, all constituted acts which were part of a conspiracy to cover up and to continue to interfere with Plaintiff's civil and Constitutional rights, in violation of either Title VII or 42 U.S.C. Section 1985 or other civil rights statutes and the First Amendment.

SIXTH CAUSE OF ACTION

30. The involuntary acts of all the individual Defendants herein also violated Title VII, 42 U.S.C. Section 1985, other civil rights statutes, and the First Amendment, since these were not part of a regular performance of duties.

SEVENTH CAUSE OF ACTION

31. The corporate acts of Defendants BHE and PSC violated Title VII, two union contracts, and federal labor statutes and state statutes outlawing conspirational acts between employers and labor unions, against individual members of the collective bargaining unit actively engaged in union activities. Specifically it is alleged that these Defendants and the VLADECK firm freely exchanged confidential information regarding Plaintiff without Plaintiff's knowledge or consent and with effects that were damaging to Plaintiff's successful litigations against BHE and PSC and the E.E.O.C. investigation.

EIGHTH CAUSE OF ACTION

32. Plaintiff has another set of issues to be tried against Defendant BHE under 75 Civ. 186 (EW) consolidated with the instant action, which demonstrate a prolonged and widespread pattern of discrimination against Plaintiff in violation of other civil rights statutes.

NINTH CAUSE OF ACTION

33. Plaintiff has another set of issues to be tried against some of the same corporate and individual Defendants herein and other federal defendants, under 75 Civ. 3840 (EW) consolidated with the instant action, which further demonstrate a prolonged and widespread pattern of discrimination against Plaintiff in violation of 42 U.S.C. Section 1985 and other civil rights statutes.

TENTH CAUSE OF ACTION

34. The continued and widespread exclusion of Plaintiff from academic programs and academic employment and other significant employment, despite academic evaluations that describe her as "suited to teach Philosophy on the graduate level," "highly intelligent," "recommended without qualification," applicant with "superior qualities," "remarkably learned," "ambitious and dedicated," "a warm and outgoing person of very rare qualities of character," "a mature and extremely talented woman," from scholars and professionals of international reputation, and despite being highly qualified in academic achievement and professional record of past employment, and despite her eligibility for job preference under affirmative action as female and under other categories due to her unspecified race, religion, and ethnic origins, is an inexplicable fact other than when viewed as continuing violations of Title VII by persons willfully and flagrantly breaking the law.

ELEVENTH CAUSE OF ACTION

35. Plaintiff's continued exclusion from academic programs and academic and other professional employment even while other members of Plaintiff's ambiguous class who are females are witnessing an elimination of discrimination under present affirmative action programs, is evidence that Plaintiff's continued exclusion demonstrates a pattern of retaliation and conspiracy directed specifically against Plaintiff, rather than against Plaintiff as member of her class, and this further fact is also in violation of Title VII and 42 U.S.C. Section 1985 and other civil rights statutes and the First Amendment.

WHEREFORE, Plaintiff requests that the Court grant the following relief:

A. A declaratory judgment that the course of conduct and activities of the defendants set forth above are illegal and unConstitutional.

B. That the Court immediately remand to a Grand Jury those issues the investigation of which might imperil the lives of any persons who are parties herein or in any of the other actions consolidated with this action.

C. Reappointment as adjunct lecturer and reinstatement as doctoral student within The City University of New York or a comparable other institution of higher learning, on the same terms of financial support and subsidy as were due Plaintiff in Fall 1967 and thereafter if she had been awarded scholarships, fellowships, and employment for which she was most qualified.

D. A mandatory injunction or writ of mandamus ordering the Defendants to produce before the Court for delivery to Plaintiff all files, reports, records, photographs, data computer tapes and cards, and all other materials derived from Defendants' illegal and unConstitutional activities relating to Plaintiff or any of her immediate co-workers and teachers or union representatives, for the purpose of use at trial and before a Grand Jury.

E. All back salary and litigation costs due Plaintiff.

F. A judgment against each defendant in a sum to be determined by the Court for violation of Plaintiff's civil rights and Constitutional rights.

G. Recovery in the amount of \$1,000,000 in punitive damages for the willful violation of Plaintiff's civil and Constitutional rights.

H. Such other and further relief as the Court shall deem just and proper.

New York : New York

Dated April 3, 1976

Respectfully submitted:

Anna Selma Vinje Morpurgo
ANNA SELMA VINJE MORPURGO, pro se
Box 1091, Sag Harbor, NY 11963
(516) 725 1414

TO: Judith P. Vladeck, Esq., Attorney for
PROFESSIONAL STAFF CONGRESS/CUNY, Anthony De Mealas, Judith P. Vladeck

Rosemary Carroll, Esq., Attorney for
BOARD OF HIGHER EDUCATION N.Y.C., Abraham Edel, David Newton, Robert Kibbee

Michael C. McGoings, Esq., Attorney for
Ralph Munoz, Freddie G. Holt, Vincent Donato, Al Kersey, Kasine Walker,
Maxine Archer, Arthur W. Stern

Thomas W. Barron, c/o Personnel Director, New York State Division of
Human Rights, 270 Broadway, New York, NY 10007

Clerk of the Court

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ANNA SELMA VINJE MORPURGO,
Plaintiff

-vs-

PROFESSIONAL STAFF CONGRESS/CUNY ET AL.

-----X United States District Court
For the Southern District of
New York

Case No. 75 Civil 4913

Judge E. WEINFELD

-----X
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DIST/OFFICE	DOCKET YR. NUMBER	FILING DATE MO. DAY YEAR	J	N/S	O	R	R	23	\$	DEMAND OTHER	JUDGE NUMBER	JURY DEM.	DOCKET YR. NUMBER
208-1	75 4913	10 06 75	3	442	1						0835 0802		75 4913

PLAINTIFFS

ANNA SELMA VINJE M

FIRST AMENDED COMPLAINT

ANNA SELMA VINJE MORPURGO,

Plaintiff,

-v-

PROFESSIONAL STAFF CONGRESS/CUNY (PSC)
VLADECK ELIAS VLADECK & LEWIS (VLADECK)
BOARD OF HIGHER EDUCATION N.Y.C. (BHE)
and

JUDITH P. VLADECK, ANTHONY DE MEALAS,
ABRAHAM EDEL, DAVID NEWTON, ROBERT KIBBEE,
ARTHUR W. STERN, FREDDIE G. HOLT,
RALPH MUNOZ, VINCENT DONATO, KASINE WALKER,
AL KERSEY, MAXINE ARCHER, THOMAS W. BARRON,
and
JOHN/JANE DOE,

Defendants.

CAUSE

JOHN/JANE DOE

DEFENDANTS

we are indig.

PROFESSIONAL STAFF CONGRESS,

ELIAS, VLADECK & LEWIS
HIGHER EDUCATION IN THE
NEW YORK

DEL
CON
BEE
VLADECK
MEALAS
BARRON
Z

HOLT
STERN
DONATO

LKER
CHER

civil rights; job discrimination; 42 USC 200e
review decision from equal employment opportunity center

als

Anna Selma Vince Morpurgo, Pro Se
Box 1091
Sag Harbor, NY 11963

ATTORNEYS

(defts' Judith P. Vladeck
Vladeck, Elias, Vladeck &
Lewis, P.C.
Professional Staff
Congress, CUNY)

Vladeck, Elias, Vladeck & Lewis
1501 B'way, NYC 10036 221-2550

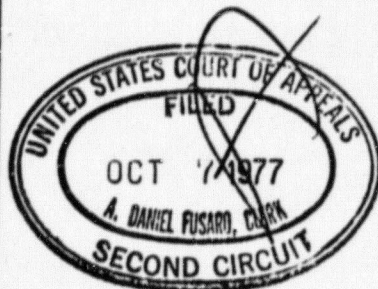
Michael C. McGoings for (deft. Equal Empl-
oyment Opportunity
(Opem's

2401 E. Street, N.W.
Washington, D.C. 20506 (202) 634-6460

E. L. Smith & Co. substs for all Vladeck defendants:
K. Smith of counsel { Anthony M. Lanzoni & Assoc.
26 Broadway, NYC 10004 - 261-1665

subst. for Prof. Staff Congress:
D. Nicholas Russo,
25 West 43rd St., NYC 10036

City defendants: Corp. Counsel
City of New York, Municipal Bldg.
NYC 10007 -- Rosemary Carroll of
counsel



☐ CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	DATE	FILING FEES PAID		STATISTICAL CARDS	
	OCT 6 1975	RECEIPT NUMBER	151	C.D. NUMBER	CARD DATA MAILED
					JS-5 X
					JS-6

UNITED STATES DISTRICT COURT DOCKET

DC-11 (Rev. 1/75)

EXHIBIT 3-C

75 Civ. 4913 MORPURGO VS CUNY ET AL

Wenfeld, J.

DATE	NR.	PROCEEDINGS
10-6-75	1	Filed order permitting pltf. to proceed in forma pauperis without prepayment of costs or fees. Edelstein, J.
10-6-75	2	Filed complaint and issued summons.
10-29-75	3	Filed in 75 CIV 186-E.W.: plaintiffs affdvt. and notice of motion for assignment of counsel for cases 75 CIV 186 EW; 75 CIV 3840 MEL and 75 CIV 4913 CMM.
10-30-75	3	Filed notice of reassignment to Judge Weinfeld, mn.
11-26-75	4	Filed ANSWER of deft. Professional Staff Congress/CUNY.
11-26-75	5	Filed ANSWER of defts' Judith P. Vladeck & Vladeck, Elias, Vladeck & Lewis, P.C. VEV&L VEV&L
12-31-75	6	Filed notice of appearance for deft. Equal Employment Opportunity Comm employees
01-29-76	7	Filed defts. memorandum and notice of motion for an order to dismiss ret. on submission
02-05-76	8	Filed pltf./affdvt. in opposition to E.E.O.C. atty's motion to dismiss
02-09-76	9	Filed summons with marshals return served— Ralph Munoz by F. Holt on 11-26-75 Arthur W. Stern by F. Holt on 11-26-75 Maxine Archer unable to serve Al Kersey by F. Holt on 11-26-75 Kasine Walker by F. Holt on 11-26-75 Freddie G. Holt by F. Holt on 11-26-75 Vincent Donato by F. Holt on 11-26-76 United States of America by R. Lee on 11-28 -75 United States of America P. Troia on 11-28-76
02-09-76	10	#285470 Filed summons with marshals return served— Anthony De Mealas unable to serve David Newton unable to serve Professional Staff Congress by Chris Kahne on 11-3-75 Vladeck Elias Cladeck & Lewis by Judith P. Vladeck on 11-5-75 Judith P. Cladeck on 11-5-75 Thomas W. Barron unable to serve Abraham Edel by Janet Wolt on 11-10-75 Board of Higher Education In City of NY by L Camacho on 12-4-75 Anthony De Mealas unable to serve Robert J. Kibbee by L. Camacho on 12-4-76
02-13-76	11	Filed deft. Equal Employment Opportunity Comm. notice of hearing it's motion pursuant to rules 12(b)(1) and (6) to dismiss pltf's complaint to held on 2-24-76.

03-17-76	--	Filed memo endorsed on document #7: The motions to dismiss the complaints in 75-3840 as against MIT and Princeton and in 75-4913 as against the 7 named employees of the EEOC are granted. Plaintiff, if she so desires, will be given one more opportunity in both actions to allege facts that would entitle her to relief against these defendants, failing which the complaints will be dismissed with prejudice. The <u>amended complaint</u> , if any, is to be served within 20 days from this date. -- Weinfeld, J. m/n by pro-se clerk to plff. m/n to defts.
04-04-76	12	Filed AMENDED COMPLAINT with affdvt. of service.
04-21-76	13	Filed consent order substituting attorney for Vladeck defendants. -- Weinfeld, J.
04-23-76	14	Filed defendants' memorandum and notice of motion to dismiss the case for lack of jurisdiction and for failure to state a claim. - ret. (no date)
04-26-76	15	Filed stip. and order ext. deft. Prof. Staff Congress/CUNY's time to answer to amended complaint to 5-1-76. -- Weinfeld, J.
04-30-76	16	Filed stip. and order subst. Attorney of record for deft/Prof. Staff Congress/CUNY -- Weinfeld, J.

9

75 CIV 4913 Morpurgo v. Prof. Staff Congress/CUNY et.al.
page 3 WEINFELD, J.

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Order or Judgment Noted
<u>5-18-76</u>	<i>Filed first set of interrog. to defts Vladeck et al.</i>	
04-20-76	17) Filed deft. Vladeck, Elias, Vladeck & Lewis and Judith P. Vladeck's ANSWER to first amended complaint.	
04-28-76	18) Filed deft. Prof. Staff Congress/CUNY's ANSWER to first amended complaint.	
05-05-76	19) Filed deft. Vladeck's first set of interrog. to pltf.	D.R.
05-11-76	20) Filed pltf's opposition to the EEOC's motion to dismiss.	
05-11-76	21) Filed pltf's memorandum in opposition to EEOC's motion to dismiss.	
06-07-76	22) Filed defendants Vladeck response to first set of interrog.	
06-15-76	23) Filed pltf's petition for a protective order barring premature disclosure with exhibits attached. -	
06-28-76	24) Filed deft. Professional Staff Congress affv. and notice of motion for summary judgment pursuant to Rule 56 Federal Rules of Civil Procedure.	
06-29-76	25) Filed defts. Vladeck affv. and notice of motion for summary judgment pursuant to Rule 56 F.R.C.P. Ret. 07-06-76.	
06-29-76	26) Filed defts. Vladeck Statement of Material Facts Under local rule 9 (3).	
06-30-76	27) Filed defts memorandum of law in support of motion for summary judgment.	
06-30-76	28) Filed defts affv. of Judith Vladeck in support of motion for summary judgment.	
-7-20-76	--- Filed pltf's opposition and notice of in camera submission ref. on July 20, 1976 (filed in 75 Civ. 186)	
-11-18-76	--- Filed memo endorsed on document #23: The complaint having dismissed as to the deft. Vladeck, the within application is moot and accordingly is denied. - Weinfeld, J. m/copy to pltf.	

- 11-18-76 --- File: OPINION #45374... (re actions 75 Civ 186, 75 Civ 3840 and 75 CIV 4912) The complaints are dismissed against all the defendants in all actions except as to the defendants Edel, Norton, Kibbee, Konlow, Myers, Elias, Thornton, Hong, McLaughlin, Prochansky and Millerbrand in actions 75 Civ 3840 and 75 Civ 4913. Weinfeld, J. m/n (filed in 75 Civ 186)
- 11-22-76 29) Filed Vladeck defendants reply affdvt.
- 11-22-76 30) Filed deft. Equal Employment Opportunity Comm. motion for ext. of time to reply to pltf's amended complaint.
- 11-22-76 31) Filed pltf's affdvt. in opposition to PSC defts' motion for summary judgment.
- 11-22-76 32) Filed pltf's supplemental memorandum.
- 11-22-76 33) Filed pltf's affdvt. in opposition to Vladeck defendants motion.
- 12-01-76 34) Filed Judgment and order dismissing complaint as to all defendants except Abraham Edel, David Norton and Robert Kibbee - Clerk. (filed in 75 Civ 186)
- 12-01-76 35) Filed pltf's notice of submission of interrog. and request for disclosure of documents from Municipal defendants. (filed in 75 Civ 3840)
- 12-14-76 36) Filed pltf's motion for leave to reargue (re opinion #45374) with memo endorsed: Motion denied -- Weinfeld, J. m/n and mailed to pltf. pro-se (filed in 75 Civ 186)
- 12-22-76 37) Filed plaintiffs affdvt. and motion re appeal with memo endorsed: The Court has no objection to pltf pursuing her appeal in forma pauperis only in 75 Civ 186. Pltf. may not consolidate cases for appeal. Only in 75 CIV 186 final judgment was entered. Other 2 cases pending as to a number of defendants dismissed. Weinfeld, J. (mailed copy to pltf) -- filed in 75 CIV 186

75 CIV 4913 EW
Morpurgo vs. Prof. Staff/Congress, etc.

DATE	PROCEEDINGS	Date Order or Judgment Noted
12-30-76	34) Filed plaintiffs jury demand.	
01-17-77	(35) Filed Municipal deft's answers to plttf's interrog's	
01-17-77	(36) Filed Municipal deft's responses to plttfs notice for disclosure of documents dated 11-30-76	
-01-19-77	Filed plttfs notice in opposition to settlement, pet. for inj. action pending appeal and stay in judgment; motion to compel discovery and return of interrog. -- ret. 01-18-77 WITH MEMO ENDORSED: Plttfs motion to compel discovery and return interrog. denied. Plttfs cross-motion in opposition to settlement is denied as moot, etc. - Weinfeld, J. m/n and mailed copy to plttf, pro=se (filed in 75 CIV 3840)	
-02-01-77	Filed Municipal defendants notice of motion for summary judgment - ret 03-01-77 (filed in 75 CIV 3840)	
-02-01-77	Filed Municipal defendants memorandum of law in support of mot. for summary judgment (filed in 75 CIV 3840)	
-02-01-77	Filed Municipal defendants Rule 9(g) statement in support of mot. for summary judgment (filed in 75 CIV 3840)	
-02-04-77	Filed plttfs P.T. Brief and memorandum against the "Municipal defendants (filed in 75-3840)	
-03-01-77	Filed deft's proposed jury instructions (filed in 75 CIV 3840)	
-03-01-77	Filed deft's pre-trial memorandum. (filed in 75 CIV 3840)	
-4-5-77	Filed True Copy of Mandate from the USCA that appellant's motion is denied in all cases, the appeal ent. in 75 Civ 186 from the judgment is dismissed & the appeal from the order ent. in 75 Civ 3840 & 75 Civ 4913 is dismissed without prejudice to renewal once the district court has rendered a final judgment as to all defts in those two suits..... Clerk. n/m & copy of Order sent to plttf by Dkt. Clerk. (Mandate filed in 75 Civ 186)	

- 5-25-77 Filed deft (Corp. Counsel's) affidavit requesting adj. to 5-17-77 on
 pliffs motion for discovery. (Filed in 75 Civ 3840)
 - 7-27-77 Filed pliff's notice of motion for a judgment pursuant to Rule 37 (a) (3) of the FRCP
 ret 5-3-77 (filed in 75-3840)
 - 7-27-77 Filed pliff's notice of motion under Rule 37 (b)(2)(a) of the FRCP & petition for an
 injunction against BHE Corporate Deft ret 3-8-77 (filed in 75-3840)
 - 7-27-77 Filed pliff's notice of petition to amend the opinion dated May. 18, 1976 by the Hon.
 H. Weinfeld on grounds of new evidence ret 5-3-77 (filed in 75-3840)
 - 7-27-77 Filed pliff's notice of motion under Rule 37 (b) (2) (B) of the FRCP against Municipal
 deft's ret 5-3-77 (filed in 75-3840)
 - 7-27-77 Filed pliff's OSC against Municipal Deft's for immediate production of documents ret 3-15-77
 (filed in 75-3840)
 - 7-27-77 Filed Deft Municipal deft's affidavit in opposition to motion for a judgment pursuant
 to Rule 37(a)(3) of the FRCP & in support of a protective order barring further motions
 for discovery (filed in 75-3840)
 - 7-27-77 Filed Deft's affidavit in opposition to motion for an injunction & discovery
 - 7-27-77 Filed Municipal deft's affidavit in opposition to motion to amend Court's opinion
 of Nov. 8, 1976 (filed in 75-3840)
 - 7-27-77 Filed deft's affidavit in opposition to pliff's motion under Rule 37 (b)(2) & (a) (3)
 of the FRCP (filed in 75-3840)
 - 7-27-77 Filed affidavit in opposition to pliff's motion (filed in 75-3840)
 - 7-27-77 Filed pliff's affidavit of failure to complete discovery ordered by Court under Rule
 37 (a) (3) FRCP (filed in 75-3840)
 - 7-27-77 Filed pliff's opposition to deft's motion for summary judgment DEMAND FOR JURY TRIAL
 (filed in 75-3840)

WEINFELD, J.

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT	DOCKET NO. 75-4913
MORPURGO, ANNA VINJE		USA ET AL	PAGE 5 OF 5 PAGES
DATE	NR.	PROCEEDINGS	
7-27-77		Filed deft's affid in support of deft's request that plttf's motion for discovery . ret 3-9-77 be adj to 3-15-77 (filed in 75-3840)	
7-27-77		Filed plttf's objection to the manner of these proceedings & prejudicial against plttf (filed in 75-3840)	
7-27-77		Filed plttf's replying affid to deft's affid of 27 May 1977 (filed in 753840)	
7-27-77		Filed plttf's notice of objection to deft's belated new affid of 16 June 1977 (filed in 75-3840)	
7-27-77		Filed deft's findings (filed in 75-3840)	
7-27-77		Filed schedule of new evidence presented to Judge Weinfeld postdating res Judicata in the NYSS/NYC proceedings against deft's (filed in 75-3840)	
7-27-77		Filed Opinion#46216 & Order that the only claims advanced in plttfs amended complts that have survived motions to dismiss & motions for violated plttfs rights to due process in connection with the decision not to reappoint her as a lecturer at Queensborough Community College, & the decision not to allow her to continue in the doctoral program in philosophy at the City University of .Y. For the reasons stated, the defts motion for summary judgment on plttfs claim of denial of due process is granted, & defts motion for summary judgment is granted when plttf was not rehired as a lecturer & when dropped from the doctoral program. The only outstanding claims in 75 Civ 3840 & 75 Civ. 4913 were those against the City defts. Resolution of the instant motion disposes of these claims, & judgment may now be entered in favor of the City defts as well as the remaining defts in 75 civ 3840 & 75 civ 4913, who previously obtained orders granting summary judgment or dismissing plttfs complt.....AO Ordered, WEINFELD, J. n/m & copy sent to pitcf by Dkt. Clerk.	

8-2-77

Filed Judgment & Order that debts U.S.A., et al have judgment against
pltff Anna Selma Vinje Morpurgo dismissing the complt in 75 Civ 3840
& 75 Civ 4913. Ordered, that debts Professional Staff Congress/CUNY
(PSC), et al, have judgment against pltff dismissing the complt in
75 iv 4913.....Clerk. n/m & copy sent to pltff by Dkt. Clerk.

08-15-77

Filed Municipal debts affdvt. in opposition to pltf's motion pursuant to rule 60
for relief from the judgment of the Court

08-24-77

Filed pltf's memorandum and notice of motion for relief from nudgment under
rule 60(b) (1). with memo. end. The motion is denied--Weinfeld, J. m/n
(Filed in 75-186)

9-1-77

Filed pltffs notice of appeal to the USCA to consolidate both
actions (75 Civ 3840 & 75 Civ 4913) from the Opinions & Judgments
of the USDC, (#45374 & 46212) dismissing all parts pf her complts
on 11-18-76 & 7-27-77. Judgment Filed 8-2-77. Copies mailed to:
D. Nicholas Russo, Professional Staff Congress/CUNY, 25 W. 43rd St.,
New York, N.Y. 10036 - Anthony M. Lanzone & Associates, 26 B'way,
New York, N.Y. 10004 - Richard C. McGoings, Equal Employment
Opportunity Comm., 2401 E. St., NW, Washington D.C. 20506

DC-111A REV. (1/75)

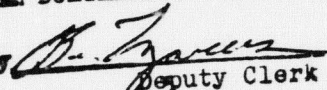
CLERK OF THE COURT

WEINFELD, J.

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT		DOCKET NO. 75-4913
ANNA S.V. MORPURGO		PROFESSIONAL STAFF CONGRESS et al		PAGE 6 OF ____ PAGES
DATE	NR.	PROCEEDINGS		
8-5-77		Filed plttfs notice of appeal & motion to consolidate with (75-3840) to USCA.		
9-29-77		Filed Memo-End. On notice of leave to appeal in forma pauperis, which is granted. Time for filing a notice of appeal is ext. to 10-3-77 WEINFELD, J. n/m		

A TRUE COPY
RAYMOND E. BURGHARDT, Clerk

By 
Deputy Clerk

DC-111A REV. (1/75)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ANNA SELMA VINJE MORPURGO

-vs-

PROFESSIONAL STAFF CONGRESS/CUNY ET AL.

CASE NO. 75 Civil 4913

JUDGE E. WEINFELD

CLERK'S CERTIFICATE

-----X
I, RAYMOND F. BERGMARDT, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the certified copy of docket entries lettered A- F, and the original filed papers numbered 1 thru 35, and exhibits _____, inclusive, constitute the record on appeal in the above entitled proceeding; except for the following missing documents:

DATE FILED

PROCEEDINGS

10-6-77

Filed order permitting pltf. to proceed in forma pauperis without prepayment of cost or fees.

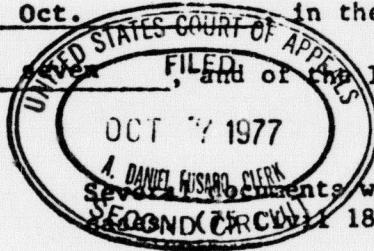
02-13-76

Filed deft. equal employment opportunity comm. notice of hearing it's motion pursuant to rules 12(b)(1) and (6) to dismiss pltf's complaint to be held on 2-24-76.

04-23-76

Filed deft's memo and notice of motion to dismiss the case for lack of jurisdiction and for failure to state a claim. ret. (no date)

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 6th day of Oct. in the year of our Lord, One thousand nine hundred and seventy 77, and of the Independence of the United States the 202nd year.



Several documents which are missing were filed in related cases (SDNY 186 & 75 Civil 3840).

Raymond F. Burgardt
Clerk of the Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

ANNA SELMA VINJE MORPURGO, :

Plaintiff, :

-against- :

PRO SE
75 Civil 3840

UNITED STATES OF AMERICA, BOARD OF :
HIGHER EDUCATION N.Y.C., MASSACHUSETTS :
INSTITUTE OF TECHNOLOGY, PRINCETON :
UNIVERSITY, and RICHARD KLEINDIENST, :
WILLIAM SAXBE, EDWARD H. LEVI, HENRY :
KISSINGER, MARY MOTHERSILL, ALFRED A. :
GIARDINO, ROBERT J. KIBBEE, DAVID :
NEWTON, HAROLD M. PROSHANSKY, HANS J. :
HILLERBRAND, ARNOLD KOSLOW, ABRAHAM :
EDEL, JULIUS ELIAS, GERALD MYERS, :
ANDREW J. McLAUGHLIN, JASON SAUNDERS, :
VIRGINIA HELD, PETER CAWS, RUDOLPH :
GREWE, C.S. HONG, ROBERTA THORNTON, :
NORMA REES, NAPTHALI LEWIS, KURT :
SCHMELLER, :

Defendants. :

----- x

ANNA SELMA VINJE MORPURGO, :

Plaintiff, :

-against- :

PRO SE
75 Civil 4913

PROFESSIONAL STAFF CONGRESS/CUNY (PSC), :
VLADECK ELIAS VLADECK & LEWIS (VLADECK), :
BOARD OF HIGHER EDUCATION N.Y.C. (BHE) :
and JUDITH P. VLADECK, ANTHONY DE :
MEALAS, ABRAHAM EDEL, DAVID NEWTON, :
ROBERT KIBBEE, ARTHUR W. STERN, :
FREDDIE G. HOLT, RALPH MUNOZ, VINCENT :
DONATO, KASINE WALKER, AL KERSEY, :
MAXINE ARCHER, THOMAS W. BARRON, and :
JOHN/JANE DOE, :

Defendants. :

----- x

EXHIBIT 4.

46216

FILED
U.S. DISTRICT COURT
JUL 27 8 35 AM '77
S.D. OF N.Y.

MICROFILM

JUL 27 1977

OPINION

ANNA SELMA VINJE MORPURGO
Box 1091
Sag Harbor, New York

Pro Se

W. BERNARD RICHLAND, ESQ.
Corporation Counsel
Municipal Building
New York, New York

Attorney for Municipal Defendants

ROSEMARY CARROLL, ESQ.
Assistant Corporation Counsel
Of Counsel

EDWARD WEINFELD, D. J.

The only claims advanced in plaintiff's amended complaints that have survived motions to dismiss and motions for summary judgment made by various defendants are that the City defendants violated plaintiff's rights to due process in connection with (1) the decision not to reappoint her as a lecturer at Queensborough Community College and (2) the decision not to allow her to continue in the doctoral program in philosophy at the City University of New York. Presently before the Court are the City defendants' motion for summary judgment and plaintiff's motions for immediate reinstatement, for an order under Fed. R. Civ. P. 37 establishing various contested facts according to her claims and prohibiting the introduction of certain evidence at trial, and for an order amending that portion of this Court's opinion dated November 18, 1976 that dismissed plaintiff's claims of unconstitutional discrimination and of a conspiracy to deprive her of her constitutional rights.

The defendants' motion for summary judgment is granted with respect to plaintiff's claim that she was denied due process when not rehired as a lecturer. The defendants have submitted substantial evidence establishing

that plaintiff was a nontenured employee when the decision (1)
not to rehire her for an additional school term was reached.
In her voluminous submissions to the Court, plaintiff has not
controverted this evidence, nor has she tendered anything to
indicate that she enjoyed "de facto" tenure, i.e., a justifi-
able expectation of continued employment despite her non-
tenured status. Plaintiff thus had no property interest pro-
tected under the Fourteenth Amendment. (2) Moreover, plaintiff
has raised no material issue of fact with respect to whether
her liberty interests under the Fourteenth Amendment were vio-
lated by public disclosure of the information upon which the
decision not to reappoint her was based. (3)

Plaintiff's further claim that she was denied due
process when dismissed from the doctoral program at City
University of New York is based in large part on her contention
that the defendants deliberately and in bad faith falsified the

(1) See N.Y. Educ. Law § 6206 (McKinney 1972).

(2) Board of Regents v. Roth, 408 U.S. 564, 575-78 (1972);
Rocker v. Huntington, ___ F.2d ___, Dkt. No. 76-7334 (2d
Cir. Feb. 24, 1977) (per curiam); Lombard v. Board of Educ.,
502 F.2d 631, 637 (2d Cir. 1974), cert. denied, 420 U.S. 976
(1975).

(3) See Bishop v. Wood, 426 U.S. 341, 348-49 (1976); Board of
Regents v. Roth, 408 U.S. 564, 573-75 (1972).

grades originally given her on her exams for the purpose of prejudicing a fair determination of her entitlement to continue in the program. The defendants have abundantly established that no falsification or improper alteration of records or examination scores took place, and that plaintiff was dismissed from the doctoral program solely because she repeatedly failed the comprehensive examinations required to be taken and passed by doctoral candidates.

The defendants' submissions on this motion, uncontroverted by the plaintiff, establish that the defendants afforded plaintiff ample notice of the academic requirements for remaining in the doctoral program, advised plaintiff of her deficiencies in a timely manner, and, indeed, made special and extraordinary efforts to allow plaintiff to remedy her numerous failures to meet the requirements. (4)

After nine examination failures, she was given a final opportunity to remain at the program, but

again failed to meet the conditions. (5) plaintiff's unsupported

(4) See *Mahavongsanan v. Hall*, 529 F.2d 448, 449-50 (5th Cir. 1976); *Gaspar v. Bruton*, 513 F.2d 843, 850 (10th Cir. 1975); *Connelly v. University of Vermont*, 244 F. Supp. 157 (D. Vt. 1965).

(5) In an Article 78 proceeding brought in the New York State Supreme Court, see N.Y.C.P.L.R. § 7801 et seq. (McKinney 1963 & Supp. 1976), plaintiff attacked her dismissal from the doctoral program as being arbitrary and capricious. The

and reiterated assertions that in fact she passed examinations she was graded as having failed does not entitle her to have the Court, as opposed to her professors and those who graded her examinations, review her academic performance. (6)

Nor is there any material issue concerning whether the defendants acted arbitrarily or in bad faith in grading or processing her examinations and maintaining her records. In response to the defendants' well-documented motion, plaintiff has merely submitted conclusory allegations, not based on personal knowledge, that she in fact passed certain examinations, that she believes one of her "grade sheets" (but apparently not the underlying examination) contained a forged signature, and that the defendants did not adhere to their established procedures in grading her examinations. (7) Rather than tendering any specific factual or evidential matter

footnote 5 cont'd

court there found, however, that plaintiff's dismissal was adequately justified by her 11 separate failures to pass various parts of the comprehensive examinations required to be taken by doctoral candidates.

(6) See cases cited in note 4 supra.

(7) See Applegate v. Top Assocs., Inc., 425 F.2d 92, 96 (2d Cir. 1970).

indicating that a genuine issue remains for trial, plaintiff has resorted to the sort of vague allegations, equivocations and references to irrelevancies that have characterized this litigation from the outset. That plaintiff challenges the veracity of affidavits and documents submitted by the defendants cannot, in the absence of evidential facts tending to support her claims, serve to defeat a motion for summary judgment.⁽⁸⁾

The Court is well aware that summary judgment is a drastic form of relief that is to be granted only sparingly.⁽⁹⁾ However, unless the summary judgment rule has become a dead letter simply because a party reiterates conclusory allegations built on strong emotions rather than factual foundations, the defendants are entitled to the relief requested.⁽¹⁰⁾ Accordingly, the defendants' motion for summary judgment on plaintiff's claim that she was denied due process when dropped from the

(8) *Modern Home Institute, Inc. v. Hartford Acc. & Indem. Co.*, 513 F.2d 102, 110 (2d Cir. 1975); *Dyer v. MacDougall*, 201 F.2d 265, 268-69 (2d Cir. 1952); *Morgan v. Sylvester*, 125 F. Supp. 380, 390 (S.D.N.Y. 1954), *aff'd*, 220 F.2d 758 (2d Cir. 1955).

(9) *See United States v. Bosurgi*, 530 F.2d 1105, 1110 (2d Cir. 1976); *Heyman v. Commerce & Indus. Ins. Co.*, 524 F.2d 1317, 1320 (2d Cir. 1975).

(10) *See Applegate v. Top Assocs., Inc.*, 425 F.2d 92, 96-97 (2d Cir. 1970).

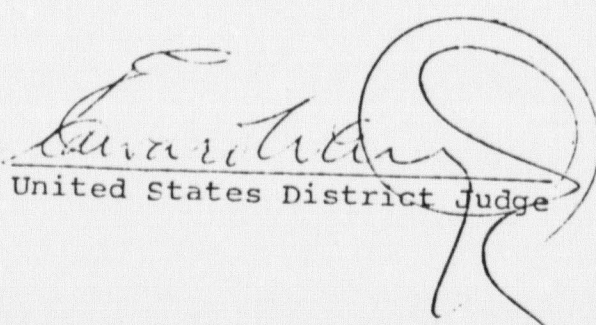
doctoral program is granted.

Plaintiff has submitted nothing to indicate that her claims of discrimination and conspiracy, which were previously dismissed by this Court, are meritorious; her motion for reinstitution of these claims is accordingly denied. Obviously, plaintiff has made no showing of a likelihood of success on the merits of her claims, and her motion for immediate reinstatement is thus denied. Plaintiff's further motions under Rule 37 of the Federal Rules of Civil Procedure are also denied.

As noted, the only outstanding claims in 75 Civil 3840 and 75 Civil 4913 were those against the City defendants. Resolution of the instant motion disposes of these claims, and judgment may now be entered in favor of the City defendants as well as the remaining defendants in 75 Civil 3840 and 75 Civil 4913, who previously obtained orders granting summary judgment or dismissing plaintiff's complaints.

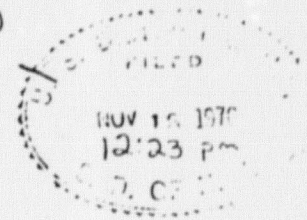
So ordered.

Dated: New York, N. Y.
July 26, 1977


United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Copy



----- x

ANNA SELMA VINJE MORPURGO, :

Plaintiff, :

-against- :

PRO SE
75 Civil 186

BOARD OF HIGHER EDUCATION IN CITY OF NEW :
YORK, as Board of Trustees for The City :
University of New York, the Graduate :
School and University Center of the City :
University of New York, and John/Jane :
Doe, employees, former employees, and :
JOHN/JANE DOE, :

Defendants. :

----- x

ANNA SELMA VINJE MORPURGO, :

Plaintiff, :

-against- :

PRO SE
75 Civil 3840

UNITED STATES OF AMERICA, BOARD OF HIGHER :
EDUCATION N.Y.C., MASSACHUSETTS INSTITUTE :
OF TECHNOLOGY, PRINCETON UNIVERSITY, and :
RICHARD KLEINDIENST, WILLIAM SAXBE, EDWARD :
H. LEVI, HENRY KISSINGER, MARY MOTHERSILL, :
ALFRED A. GIARDINO, ROBERT J. KIBBEE, :
DAVID NEWTON, HAROLD M. PROSHANSKY, HANS :
J. HILLERBRAND, ARNOLD KOSLOW, ABRAHAM :
EDEL, JULIUS ELIAS, GERALD MYERS, ANDREW :
J. McLAUGHLIN, JASON SAUNDERS, VIRGINIA :
HELD, PETER CAWS, RUDOLPH GREWE, C.S. :
HONG, ROBERTA THORNTON, NORMA REES, :
NAPHTALI LEWIS, KURT SCHMELLER, :

Defendants :

----- x

EXHIBIT 5.

----- x
ANNA SELMA VINJE MORPURGO, :

Plaintiff, :

-against- :

PRO SE
75 Civil 4913

PROFESSIONAL STAFF CONGRESS/CUNY (PSC), :

VLADECK ELIAS VLADECK & LEWIS (VLADECK), :

BOARD OF HIGHER EDUCATION N.Y.C. (BHE) :

and JUDITH P. VLADECK, ANTHONY DE :

MEALAS, ABRAHAM EDEL, DAVID NEWTON, :

ROBERT KIBBEL, ARTHUR W. STERN, :

FREDDIE G. HOLT, RALPH MUNOZ, VINCENT :

DONATO, KASINE WALKER, AL KERSEY, :

MAXINE ARCHER, THOMAS W. BARRON, and :

JOHN/JANE DOE, :

Defendants. :

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ANNA SELMA VINJE MORPURGO
Box 1091
Sag Harbor, New York

Pro Se

75 Civ. 186: W. BERNARD RICHLAND, ESQ.
Corporation Counsel
Municipal Building
New York, New York

Attorney for Defendant
Board of Higher Education
of the City of New York

ROSEMARY CARROLL, ESQ.
Assistant Corporation Counsel
Of Counsel

75 Civ. 3840:

ROBERT B. FISKE, JR., ESQ.
United States Attorney for the
Southern District of New York
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York

Attorney for Defendants
United States of America, Edward H. Levi,
Henry Kissinger, William Saxbe and
Richard Kleindienst

NATHANIEL L. GERBER, ESQ.
Assistant United States Attorney
Of Counsel

WIEN, LANE & MALKIN, ESQS.
60 East 42nd Street
New York, New York

Attorneys for Defendant
Massachusetts Institute of Technology

ROBERT G. DESMOND, ESQ.
Of Counsel

JACKSON, NASH, BROPHY, BARRINGER & BROOKS, ESQS.
330 Madison Avenue
New York, New York

Attorneys for Defendant
Princeton University

RONALD S. HERZOG, ESQ.
Of Counsel

MICHAEL B. MUKASEY, ESQ.
Patterson, Belknap & Webb
30 Rockefeller Plaza
New York, New York

Attorney for Defendant
Mary Mothersill

SHEA & GARDNER, ESQS.
734 Fifteenth Street, N.W.
Washington, D.C.
Of Counsel

W. BERNARD RICHLAND, ESQ.
Corporation Counsel
Municipal Building
New York, New York

Attorney for Defendants
Board of Higher Education N.Y.C.; Giardino;
Kibbee; Newton; Proshansky; Hillerbrand;
Koslow; Edel; Elias; Myers; McLaughlin;
Saunders; Held; Caws; Grewe; Hong; Thornton;
Rees; Lewis; Schmeller

ROSEMARY CARROLL, ESQ.
Assistant Corporation Counsel
Of Counsel

75 Civ. 4913:

D. NICHOLAS RUSSO, ESQ.
25 West 43rd Street
New York, New York

Attorney for Defendant
Professional Staff Congress/CUNY

ANTHONY M. LANZONE & ASSOCIATES
26 Broadway
New York, New York

Attorneys for Defendants
Vladeck, Elias, Vladeck & Lewis;
Judith P. Vladeck

EDWIN L. SMITH, ESQ.
KENNETH SCOTT, ESQ.
Of Counsel

MICHAEL C. MCGOINGS, ESQ.
Equal Employment Opportunity Commission
Washington, D.C.

Attorney for Defendants
Stern; Holt; Munoz; Donato; Walker;
Kersey; Archer

W. BERNARD RICHLAND, ESQ.
Corporation Counsel
Municipal Building
New York, New York

Attorney for Defendants
Board of Higher Education N.Y.C.;
Edel; Newton; Kibbee

ROSEMARY CARROLL, ESQ.
Assistant Corporation Counsel
Of Counsel

EDWARD WEINFELD, D. J.

Plaintiff was formerly employed by the New York City Board of Higher Education ("BHE") as an adjunct lecturer at Queensboro Community College ("QCC"), a division of the City University of New York, and was enrolled in a doctoral program at City University of New York ("CUNY"). Appearing pro se, she commenced three separate actions under the Civil Rights Act ⁽¹⁾ against various agencies and individuals, charging a multiplicity of wrongful acts and conduct originating, for the most part, about CUNY's termination of her studies leading to a doctorate degree and its refusal to renew her contract as an adjunct lecturer at QCC. With the passage of time, and as she sought admission to other educational programs and research projects and awards of scholarships and fellowships with their stipends, her charges were broadened to encompass all who came within her path before, at the time of and subsequent to her rejections.

(1) It is not entirely clear what provisions of law the plaintiff relies on, for her complaints are far-ranging and diffuse, but, on the whole, they assert violations of the Civil Rights Act. Two of plaintiff's actions were originally assigned to other judges, but pursuant to Local Calendar Rule 13 they were transferred as "related cases" to this Court, which had the case with the lowest docket number pending before it.

This Court previously dismissed two of plaintiff's original complaints and a first amended complaint, observing that although a plaintiff appearing pro se deserves to have his complaint viewed by a less stringent standard than when drafted by a lawyer,⁽²⁾ the Federal Rules of Civil Procedure nevertheless remain applicable to such a plaintiff, particularly one who, as the plaintiff here, appears to be an educated person.

We now have before us the amended complaints in the three actions, which name as defendants the United States of America, the present and two former Attorneys General of the United States, the Secretary of State of the United States, Princeton University, Massachusetts Institute of Technology, the BHE, the New York State Division of Human Rights, the Professional Staff Congress/CUNY ("PSC") (a union of which plaintiff is a member), the attorneys who represented plaintiff in connection with an Equal Employment Opportunity Commission ("EEOC") grievance, and various individuals, some of whom are officials of named defendants sued in both their official and individual capacities.

(2) Haines v. Kerner, 404 U.S. 519 (1972) (per curiam).

Defendants in all three actions have moved on various grounds to dismiss the complaints, and perforce we consider each motion separately. In order to set the motions in proper perspective, it is desirable, to the extent that one can discern the thrust of plaintiff's allegations, to set them forth under her respective complaints.

75 CIVIL 186 (AMENDED COMPLAINT)

In this action, the first instituted by plaintiff in this Court, she sues the BHE, its employees, and various unnamed defendants for conspiracy and failure to prevent a conspiracy to deprive her of her constitutional and civil rights. Plaintiff alleges that, although qualified, the defendants refused to accept her into several graduate programs and that they wrongfully denied her scholarships and financial aid for those programs and for other programs in which she had been enrolled. Plaintiff also alleges that the defendants, in order to further, cover up or justify their unlawful acts, generated and maintained false and scandalous records concerning her and conspired with unspecified persons to slander plaintiff, to withhold records and references from academic deans and would-be sponsors of plaintiff, thereby foreclosing them from making favorable determinations about her, to punish

or bribe BHE and QCC employees in order to prevent them from supporting plaintiff's grievances or giving testimony favorable to plaintiff in unspecified proceedings, to punish faculty members and students who indicated support of plaintiff in her charges, and to incite "racist, sexist, and religious militants and . . . narcotics addicts . . . to retaliate against plaintiff as a common enemy."

75 CIVIL 3840 (SECOND AMENDED COMPLAINT)

In this action, plaintiff broadens her conspiracy charges in her first complaint to include federal officials. She charges that the conspiracy originated when she was matriculated at Hunter College, CUNY and from there spread throughout the United States and abroad. Essentially, she claims that the United States of America, past and present Attorneys General of the United States, the Secretary of State and unspecified federal agencies subjected her to intensive wiretapping and other "counterintelligence" activities, classified her as "undesirable" and engineered an immense conspiracy to deny her admittance into various doctoral programs and to prevent her from obtaining employment or matriculation in scientific research projects although she was fully qualified. Plaintiff alleges that nearly every

person involved in her dismissal as an adjunct lecturer at QCC and in the decisions not to accept her into the various programs to which she applied took action pursuant to "confidential federal directives" and later engaged in a massive cover-up conspiracy to stymie plaintiff's investigations into the "real reasons" behind her rejections. Thus, the BHE, its employees and CUNY employees -- now allegedly acting under federal government directives -- are again claimed to have falsified plaintiff's records and examination scores, to have spread false information about her, and to have coerced others into abandoning her cause, all in order to prevent her from continuing her academic career. Similarly, Massachusetts Institute of Technology and Princeton University, allegedly complying with federal directives, unlawfully rejected her applications to various doctoral programs. Defendant Mary Mothersill, who as Chairperson of the American Philosophical Association on the Status of Women in the Profession investigated plaintiff's labor grievance against the BHE, is alleged to have discovered evidence of the conspiracy among the various defendants, but to have joined the conspiracy by withholding that evidence from plaintiff. Finally, as noted, all these defendants are charged

with covering up their participation in the original conspiracy.

75 CIVIL 4913 (AMENDED COMPLAINT)

This action includes a new group of defendants. It focuses primarily on the decision in 1972 not to rehire plaintiff as an adjunct lecturer in philosophy at QCC. Plaintiff repeats many of the allegations contained in her prior complaints, but also charges that the PSC, plaintiff's registered collective bargaining representative at the college, employees of the EEOC and of the New York State Division of Human Rights, and the law firm that represented plaintiff with respect to her EEOC complaint all joined in the conspiracy to deprive her of her rights and, in furtherance thereof, misprocessed or otherwise mishandled her grievances advanced in arbitration proceedings and, subsequently, in complaints filed with the Division of Human Rights and with the EEOC. Again, all defendants are alleged to be part of a conspiracy to cover up all evidence of the wrongful actions they are purported to have taken.

MOTION BY THE BOARD OF HIGHER EDUCATION

The BHE, its employees and CUNY employees move for dismissal of the complaints against them on the grounds that (1) the claims are barred by res judicata; (2) plaintiff has failed to exhaust administrative remedies; and (3) the complaints fail to state a claim upon which relief can be granted.

As in the instance of the other defendants in these actions, the complaints against the BHE and other "municipal defendants" are incredibly muddled, vague and conclusory. The claims that are at least minimally understandable and that can be culled from the constant stream of invective running through plaintiff's complaints may, however, be summarized as follows:

In her first action, plaintiff claims that the BHE has denied her equal rights to participate in various higher educational programs and to share in educational grants. As part of this alleged denial of plaintiff's rights, the BHE is claimed to have maintained records of various libelous statements about plaintiff, to have slandered plaintiff and encouraged unnamed persons to slander her, to have prevented investigations into plaintiff's grievances by

rear ranging files and by barring access to records, to have bribed and threatened employees to cause them to withhold favorable testimony about plaintiff, and to have incited unnamed militants, drug addicts and criminals to "retaliate" against plaintiff in unspecified ways.

In the second action, expanded to include federal officials, she reiterates many of the charges against the BHE in her first complaint and further claims that the BHE and CUNY employees falsified her examination scores and academic evaluations in order to effect her dismissal from the doctoral program at CUNY. In this complaint, however, she alleges that these actions were mandated by confidential directives issued by unspecified federal agencies and were in furtherance of a vast conspiracy to deprive her of her civil rights. The municipal defendants are charged with participation in a similarly widespread cover-up conspiracy to prevent plaintiff from discovering the truth about the circumstances surrounding the BHE's actions.

In her third action, expanded to include, among others, her union representatives and her attorneys, plaintiff again charges the municipal defendants with participation

in a conspiracy and a cover-up conspiracy, both of which had as their object denials and infringements of plaintiff's constitutional rights. QCC's decision in 1972 not to re-hire plaintiff as an adjunct lecturer in philosophy is claimed to have been taken in furtherance of the conspiracy and to have been discriminatory. BHE is apparently alleged to have engineered this decision and is charged with intimidating and misleading persons who might have supported plaintiff in her efforts to be reinstated or hired elsewhere. Plaintiff also claims that the BHE, without her permission, exchanged confidential information about her with the law firm that represented her in connection with an EEOC complaint filed after her dismissal from QCC.

The first ground upon which the BHE moves to dismiss is that the complaints are barred by the res judicata effect of a 1974 decision handed down in an Article 78 proceeding⁽³⁾ instituted by plaintiff in the New York State Supreme Court. In that proceeding, plaintiff attacked the decision to terminate her participation in the CUNY doctoral program as being arbitrary and capricious and charged that

(3) See N.Y.C.P.L.R. §§ 7801-06 (McKinney's 1963).

the decision was made in retaliation for her involvement in civil rights activities. The State Supreme Court justice ruled against her on these issues, finding termination was not arbitrary or capricious and was not taken in retaliation for her civil rights activism or other activities; rather, he held that plaintiff's dismissal was adequately justified by her eleven separate failures to pass various parts of a comprehensive examination required to be taken by all doctoral candidates.

To the extent that the Article 78 proceeding adjudicated the issues whether the BHE or CUNY employees acted arbitrarily or capriciously in dropping plaintiff from the doctoral program and whether this action was taken in retaliation for plaintiff's civil rights activities, it is res judicata for purposes of plaintiff's present suits. However, as the above-summarized portions of plaintiff's complaints indicate, the allegations against the municipal defendants in this action charge constitutional and federal statutory violations of her rights and so go much beyond the issues litigated in the Article 78 proceeding. Moreover, although res judicata would ordinarily operate to bar subsequent litigation of all claims that were or could have been asserted

in a prior action, the application of that principle has been relaxed somewhat by the Court of Appeals in civil rights actions. The rule now appears to be that a plaintiff is not barred from asserting those constitutional claims that could have been, but were not, advanced in a state court proceeding; rather, he is barred from renewing only those claims specifically raised and passed upon by the state courts. (4)

The municipal defendants also move for dismissal on the ground that plaintiff has failed to exhaust her administrative remedies. This claim is based upon a proceeding pending before the State Division of Human Rights in which plaintiff has challenged her dismissal as adjunct lecturer as being discriminatory and retaliatory. Although a plaintiff asserting a civil rights action need not first seek relief in the state courts before bringing suit in the federal courts, (5) the rule in this Circuit is that once he has commenced a state administrative proceeding, he must exhaust that remedy in

(4) Newman v. Board of Educ., 508 F.2d 277 (2d Cir.), cert. denied, 420 U.S. 1004 (1975); Lombard v. Board of Higher Educ., 502 F.2d 631 (2d Cir. 1974), cert. denied, 420 U.S. 976 (1975).

(5) See, e.g., Monroe v. Pape, 365 U.S. 167 (1961); Steffel v. Thompson, 415 U.S. 452, 472-73 (1974); Sostre v. McGinnis, 442 F.2d 178, 183 (2d Cir. 1971) (*en banc*), cert. denied, 404 U.S. 1049 (1972).

his chosen forum before a section 1983 action may be insti-

(6)

tuted in the district courts. However, the administrative remedy provided plaintiff by the New York Human Rights Law

is limited to a section 1983 claim relating to the BHE's allegedly discriminatory termination of plaintiff as an em-

(7)

ployee. Moreover, plaintiff asserts this very claim under

(8)

Title VII of the Civil Rights Act, and her prior presentation of the claim to the State Division of Human Rights and

to the EEOC, which issued her a right to sue notice, constitutes sufficient exhaustion of administrative remedies to

(9)

permit the claim to be asserted in the present action.

(6) James v. Board of Educ., 461 F.2d 566, 570-71 (2d Cir.), cert. denied, 409 U.S. 1042 (1972); Eisen v. Eastman, 421 F.2d 560 (2d Cir. 1969), cert. denied, 400 U.S. 841 (1970); see Runyon v. McCrary, ___ U.S. ___, ___, 44 U.S.L.W. 5035, 5042 n.* (U.S. June 22, 1976) (Powell, J., concurring). But see Wilwording v. Swenson, 404 U.S. 249 (1971); Houghton v. Shafer, 392 U.S. 639 (1968); Damico v. California, 389 U.S. 416 (1967).

(7) See N.Y. Exec. L. §§ 296, 297 (McKinney's 1972 & Supp. 1976).

(8) 42 U.S.C. § 20003 et seq.

(9) See 42 U.S.C. § 2000e-5; EEOC v. Union Bank, 408 F.2d 867 (9th Cir. 1968); Faraci v. Hickey-Freeman Co., 404 F. Supp. 1229 (W.D.N.Y. 1975). This is not to say that portions of plaintiff's Title VII claims are not barred by the res judicata effect of her prior Article 78 proceeding.

Nevertheless, plaintiff's complaints, insofar as they seek to charge the BHE and CUNY with violations of Title VII of the Civil Rights Act, must be dismissed for failure to state a claim. Plaintiff merely sets forth brief, naked assertions that the failure to rehire her as adjunct lecturer was an act of racial, religious, sexual or nationality-based discrimination. Given repeated opportunities to replead, plaintiff has failed to provide any factual allegations reasonably indicating that the BHE or its employees discriminated against her on the basis of any of these characteristics. Indeed, plaintiff's complaints not only fail to specify how or why the BHE's actions were discriminatory, but one cannot discern of what race, sex, religion or national origin plaintiff claims to be. At various points in her complaints she asserts that she is "of ambiguous race, religion, sex, national origin, and political affiliation"; that she is "female," "protestant/scientific skeptic," and "sepharadic/integrated"; and that she is "integrated, free-thinker, nonethnic and unisex." A complaint that fails to identify the basis for purported discrimination and that contains only confusing, conclusory and unsupported allegations of nebulous discriminatory actions cannot suffice to

(10)
state a claim under Title VII.

The bulk of plaintiff's claims against the movants concerning conspiracy, falsification of records, bribery, coercion and "cover-ups" that are not barred by res judicata must be dismissed for failure to state a claim upon which relief can be granted. Plaintiff's claims that BHE and various municipal employees participated in a federally-directed conspiracy to deprive her of her civil rights are so vague and conclusory that they fail to establish a cause of action under 42 U.S.C., section 1985(3). Although plaintiff has made some minimal effort to set forth the interrelationships of the alleged co-conspirators and the parameters of the conspiracy, she has done so by way of freewheeling and speculative allegations and has failed, after many admonitions by the Court, to allege any facts that could give rise to a reasonable inference of a conspiracy. (11) In addition, plaintiff's complaints

(10) See, e.g., Serzysko v. Chase Manhattan Bank, 461 F.2d 699, 703 & n.3 (2d Cir.), cert. denied, 409 U.S. 883 (1972); Marshall v. Electric Hose & Rubber Co., 65 F.R.D. 599, 603-06 (D. Del. 1974); cf. Scott v. University of Delaware 385 F. Supp. 937, 943-45 (D. Del. 1974).

(11) See Fine v. City of New York, 529 F.2d 70, 74 (2d Cir. 1977); Powell v. Jarvis, 460 F.2d 551, 553 (2d Cir. 1972); Powell v. Workmen's Compensation Bd., 327 F.2d 131, 137 (2d Cir. 1964).

do not present any facts to indicate that the BHE was motivated by a "racial, or perhaps otherwise class-based, invidiously discriminatory animus" to deny plaintiff equal (12) protection of the laws. Under such circumstances, plaintiff fails to state a claim under section 1985(3).

Plaintiff, for the most part, has also failed to allege, in anything but the most conclusory terms, any direct deprivation of constitutional rights occasioned by the BHE or its employees. Moreover, the BHE is not a "person" within the meaning of section 1983 and thus cannot be sued under (13) that provision of the Civil Rights Act. Giving the most liberal interpretation of plaintiff's claims, however, it is apparent that no cause of action under section 1983 based on discrimination has been alleged. Although plaintiff does claim that she was discriminated against when she was not rehired at QCC and when she was dropped from the CUNY doctoral program, she again sets forth only a hodgepodge of vague and

(12) Griffin v. Breckenridge, 403 U.S. 88, 102 (1971); see Kletschka v. Driver, 411 F.2d 436, 447 (2d Cir. 1969); Bergman v. Stein, 404 F. Supp. 287, 294 (S.D.N.Y. 1975).

(13) Monell v. Department of Social Services, 532 F.2d 259, 263-64 (2d Cir. 1976), petition for cert. filed, 45 U.S.L.W. 3005 (U.S. July 2, 1976); Kornit v. Board of Educ., Dkt. No. 75-7540, ___ F.2d ___ (2d Cir. 1976).

conclusory allegations and provides no facts to indicate that these actions were the product of any motive or policy to discriminate against her on the grounds of her race, religion, nationality or sex, or because of her membership in any class whose interests are cognizable under section 1983. Moreover, with one exception, plaintiff's complaints do not sufficiently allege deprivation of any other constitutional rights and, in any event, fail to specify the persons whose acts are claimed to have harmed plaintiff.

Read liberally, however, plaintiff's complaints in 75 Civil 3840 and 75 Civil 4913 do allege with sufficient particularity that certain named employees of BHE and of CUNY violated plaintiff's right to due process in connection with the decisions not to renew her teaching contract and not to allow her to continue in the CUNY doctoral program. It is true that in some respects the allegations concerning these persons are contradictory; for example, plaintiff in one complaint alleges that these defendants were "coerced" into committing alleged unlawful acts against her, yet in a subsequent complaint she alleges those acts were "voluntary."⁽¹⁴⁾ Obviously on this motion the Court does not pass on the verity

(14) See Complaint in 75 Civ. 3840 ¶ 34; complaint in 75 Civ. 4913 ¶¶ 12, 19, 20, 23.

of either allegation, which, for the purpose of a motion to dismiss, must be accepted. Thus, insofar as the complaints in 75 Civil 3840 and 75 Civil 4913 allege that defendants Edel, Newton, Kibbee, Koslow, Myers, Elias, Thornton, Hong, McLaughlin, Proshansky and Hillerbrand violated plaintiff's right to due process, they are upheld.

The entirety of the complaint in 75 Civil 186, in which the BHE is the only named defendant, and the other complaints, insofar as they relate to the BHE and to any municipal employees not mentioned in the preceding paragraph, are dismissed for the reasons heretofore enumerated.

FEDERAL DEFENDANTS' MOTION TO DISMISS

The United States of America, Henry Kissenger, Edward Levi, William Saxbe and Richard Kleindienst (the "federal defendants") move to dismiss the Second Amended Complaint in 75 Civil 3840. The motion is made on the grounds that (1) the Court lacks subject matter jurisdiction; (2) the complaint does not state a claim on which relief can be granted; (3) the Court lacks personal jurisdiction over the individual federal defendants; and (4) venue is improper.

The allegations against the federal defendants may

be summarized as follows. Plaintiff and others, as a result of their antiwar activities, became the subject of intrusive counterintelligence actions conducted by the CIA. Subsequently, plaintiff was classified "undesirable" by unspecified government agencies, was investigated and subjected to intensive wiretapping and other "counterintelligence" activities. These unspecified agencies issued confidential directives that plaintiff be terminated from matriculation in doctoral programs, and they presently direct schools and scientific research programs not to accept plaintiff. The federal defendants are also alleged to have covered up evidence of these activities and to have instructed unnamed subordinates to give false information in response to plaintiff's Freedom of Information Act requests. Finally, federal agencies or the individual federal defendants allegedly prevented Professor Mary Mothersill, chairperson of the American Philosophical Association's Committee on the Status of Women in the Profession, from investigating plaintiff's labor retaliation grievance and from revealing to plaintiff the "real reasons" for CUNY's rejection of her applications.

Plaintiff's claims against the federal defendants are dismissable on a number of grounds. First, plaintiff has

again failed to comply with Rule 8(a)(2) of the Federal Rules of Civil Procedure. The complaint, presumably reflecting the full benefits of two opportunities to replead, is still confusing, redundant and conclusory. With respect to the federal defendants, it contains only vague, imprecise allegations that could not possibly provide fair notice of any claims plaintiff might have against them. Indeed, the only allegations against the federal defendants that even remotely identify an occurrence upon which a claim is based are those that relate to the alleged obstruction and subsequent cover-up of Mary Mothersill's investigation of plaintiff's grievance against the BHE. Even this allegation, however, does not identify which of the twenty-three individually named defendants were responsible for the alleged obstruction of the investigation. Moreover, other than the bald assertion that Mothersill refuses to reveal to plaintiff the "real reasons" for her dismissal, plaintiff pleads no facts that would indicate the existence of any interference with Mothersill's investigation. In sum, the complaint against the federal defendants must be dismissed for plaintiff's repeated failure to comply with Rule 8(a)(2).⁽¹⁵⁾

(15) See *Place v. Sheperd*, 446 F.2d 1239, 1244, 1246 (6th Cir. 1971); *Shakespeare v. Wilson*, 40 F.R.D. 500 (S.D. Cal. 1966).

Additional grounds require dismissal of the complaint. Although not much amenable to legal analysis, the complaint does allege some sort of vast but peculiarly impenetrable conspiracy to prevent plaintiff from continuing her education and from obtaining employment in any research projects. But were the vague, conclusory allegations contained in the complaint deemed sufficient to withstand a motion to dismiss, an unwarranted burden of defense would be placed on the movants. Thus, in the Second Circuit, complaints based on the conspiracy provisions of the Civil Rights Act cannot rest on vague and conclusory allegations but must "allege with at least some degree of particularity overt acts which defendants engaged in which were reasonably related to the promotion of the conspiracy." (16) Similarly, when a direct deprivation of rights is claimed under section 1983, the plaintiff must allege the defendant's direct and personal responsibility for the purportedly unlawful conduct

(16) Powell v. Workmen's Compensation Bd., 327 F.2d 131, 137 (2d Cir. 1964); see Jacobson v. Organized Crime & Racketeering Section of U.S. Dep't of Justice, ___ F.2d ___, Dkt. No. 76-6015 (2d Cir., Nov. 3, 1976); Koch v. Yunich, 533 F.2d 80, 85 (2d Cir. 1976); Fine v. City of New York, 529 F.2d 70, 74 (2d Cir. 1975); Powell v. Jarvis, 460 F.2d 551, 553 (2d Cir. 1972); Kaufman v. Moss, 420 F.2d 1270, 1275 (3d Cir.), cert. denied, 400 U.S. 846 (1970); Scott v. University of Delaware, 385 F.2d 937, 944-45 (D. Del. 1974).

(17)
of his subordinates. This standard has been applied when
federal officials are sought to be held liable in private suits
based on causes of action arising under the constitution. (18)
The second amended complaint falls far short of compliance
with these standards.

Although pro se Civil Rights complaints must be

- (17) Williams v. Vincent, 508 F.2d 541, 546 (2d Cir. 1974); Johnson v. Glick, 481 F.2d 1028, 1033-34 (2d Cir.), cert. denied, 414 U.S. 1033 (1973); Manfredonia v. Barry, 401 F. Supp. 762, 770 (E.D.N.Y. 1975); Mukmuk v. Commissioner of Dep't Correctional Services, 369 F. Supp. 245 (S.D.N.Y. 1974).
- (18) Black v. United States, 534 F.2d 524 (2d Cir. 1976). One issue that was not addressed by the parties is the theory upon which plaintiff sues the federal defendants in their individual capacities. Although section 1985 of the Civil Rights Act does not require a defendant to have acted under color of state law, section 1983 does contain such a provision and is thus not applicable to persons acting under color of federal law. Wheeldin v. Wheeler, 373 U.S. 647, 650 n.2, 652 (1963); Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics, 456 F.2d 1339, 1346-47 (2d Cir. 1972); Norton v. McShane, 332 F.2d 855, 862 (5th Cir. 1964), cert. denied, 380 U.S. 981 (1965). Presumably, plaintiff relies upon Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971), as establishing a constitutional cause of action against federal officials for deprivation of her fourth and fifth amendment rights. She does not, however, adequately specify how these rights have been infringed. And while plaintiff's complaint may be read to assert a cause of action against federal officials arising directly under the fourteenth amendment, our disposition of the present motion makes it unnecessary to pass upon whether such a cause of action exists. The Court of Appeals has considered, but not decided, the question. Brault v. Town of Milton, 527 F.2d 730 (2d Cir. 1975).

viewed with some latitude, liberal construction of pleadings should not be permitted to override completely the rights of defendants. Plaintiff simply fails to support her allegations with any factual details that -- even imaginatively considered -- could connect the federal defendants to any conspiracy to deprive her of her rights or to any actual deprivation of her rights. The acts alleged in furtherance of the purported conspiracy are mere speculations not supported by factual averments and, in any event, are not alleged with particularity. (19)

Finally, no jurisdictional basis exists for plaintiff to sue the United States itself for damages, injunctive or declaratory relief. In her papers in opposition to the federal defendants' motion to dismiss, plaintiff represents that she does not intend to sue the United States for damages. Nonetheless, she may not sue it for injunctive or declaratory

(19) For example, unspecified federal agencies are alleged "on information and belief" to have classified plaintiff as "undesirable" and to have subjected her to intensive wire-tapping and other "counterintelligence" activities. Not a single factual allegation is put forth in substantiation of this conclusory claim. Apparently plaintiff believes that her repeated failures to obtain employment or admittance into graduate programs themselves warrant an inference of a government conspiracy against her; yet to accept such reasoning would surely be to stretch the fabric of logic and reality to the breaking point.

relief either. It has long been established that the United States, a sovereign entity, is immune from suit unless it consents to be sued. (20) Contrary to plaintiff's belief, the declaratory judgment act (21) does not constitute a consent (22) by the United States to be sued. Nor, of course, can the United States itself be sued under 42 U.S.C., sections 1983 and 1985, and 28 U.S.C., section 1343, both because it is not (23) a "person" and because these provisions do not waive (24) sovereign immunity. Although mandamus is made generally available under 28 U.S.C., section 1361, that provision only gives district courts jurisdiction "to compel an officer or employee of the United States . . . to perform a duty owed to" a plaintiff and does not apply to the United States itself.

(20) See, e.g., United States v. Sherwood, 312 U.S. 584, 586 (1941).

(21) 28 U.S.C. § 2201.

(22) Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667 (1950); Anderson v. United States, 229 F.2d 675 (5th Cir. 1956); Zito v. Tesoriero, 239 F. Supp. 354 (S.D.N.Y. 1965). Indeed, the declaratory judgment act simply makes available a new remedy when an independent jurisdictional basis exists. Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667 (1950); Field v. United States, 340 F. Supp. 175 (S.D.N.Y. 1972).

(23) United States v. City of Jackson, 318 F.2d 1 (5th Cir. 1963).

(24) Beale v. Blount, 461 F.2d 1113 (5th Cir. 1972).

Plaintiff requests relief from the United States and various of its officers that they are clearly not duty-bound to provide her; to the extent the relief requested lies within the discretion of such officers, section 1361 does not authorize mandamus to compel it. (25) In sum, as no jurisdictional basis appears to exist for suing the United States or the individual federal defendants in their official capacities, (26) the complaint, insofar as it might assert claims

(25) See *Inmates of Attica Correctional Facility v. Rockefeller*, 477 F.2d 375, 379 (2d Cir. 1973). Moreover, the United States must specifically consent to a suit in which it could be compelled to act. *Brown v. General Services Administration*, 507 F.2d 1300, 1307 (2d Cir. 1974), aff'd, ___ U.S. ___, 44 U.S.L.W. 4704 (U.S. June 1, 1976). The Court is unable to discover any such consent that would give it jurisdiction to hear the type of claims advanced by plaintiff

(26) Part of the relief requested by plaintiff is that the government turn over to her, for use before a grand jury that she requests the Court to convene, all the information it possesses relating to the alleged conspiracy against her and against her friends, co-workers, and others. A small portion of this relief might be thought to be authorized under the Freedom of Information Act, which might allow plaintiff to procure information in the hands of government agencies "pertaining to [her]." 5 U.S.C.A. § 552a(d)(1). However, the Freedom of Information Act authorizes suit against federal agencies, not against individuals or the United States itself, and no agencies are named in plaintiff's complaint. See 5 U.S.C.A. § 552a(g)(1). In addition, the Act requires complainants to exhaust their administrative remedies before bringing suit, 5 U.S.C.A. § 552a(d), and failure to do so will result in dismissal. See *Satra Belarus, Inc. v. NLRB*, 409 F. Supp. 271 (E.D. Wis. 1976). The present complaint fails to allege that administrative remedies have been exhausted. Plaintiff,

of this nature, must be dismissed on jurisdictional grounds. Moreover, as previously stated, plaintiff's complaints against the United States and all individual federal defendants sued in any capacity must be dismissed for failure to state a claim.

MOTHERSILL MOTION TO DISMISS

Defendant Mary Mothersill moves to dismiss the second amended complaint for failure to state a claim upon which relief can be granted. Plaintiff charges that Mothersill is withholding evidence of the conspiracy against her that Mothersill uncovered in the course of an investigation of plaintiff's grievance against the BHE. This investigation was allegedly undertaken by Mothersill in her capacity as Chairperson of the American Philosophical Association's Committee on the Status of Women in the Profession. Because of her failure to reveal to plaintiff the "real reasons" for the BHE's actions, Mothersill is charged with participation in the federally-directed conspiracy to deprive plaintiff of her civil

footnote 26 cont'd

in opposition to the federal defendants' motion to dismiss, avers that she has exhausted her administrative remedies by making many requests for documents from federal agencies and by bringing a federal suit to mandamus the Attorney General to begin an investigation into her complaints. Such actions do not constitute exhaustion of remedies under the Act.

rights. Somewhat inconsistently, plaintiff charges that Mothersill's participation in this conspiracy was not so much willful as it was the product of pressure put on her by the BHE, the federal government and unnamed others not to investigate plaintiff's claims thoroughly. Thus, Mothersill is cast more as a victim in the complaint than as a wrongdoer.

In her affidavit in opposition to the dismiss motion, plaintiff states that her cause of action against Mothersill is based on Mothersill's failure to perform her duties in the face of unlawful federal intervention, which inaction is alleged to have been in violation of Title VII of the Civil Rights Act and Titles VI and IX of the Federal Higher Education Act. (27) There is nothing in either of these acts that imposes a duty on a chairperson of a private professional association to investigate plaintiff's charges that her constitutional rights are being violated by a conspiracy between the government and various educational institutions or to require that chairperson to divulge any information to plaintiff. Thus, plaintiff's cause of action, if any, against Mothersill must rest on the claim that Mothersill participated in a conspiracy to violate plaintiff's rights in contravention of 42

(27) 20 U.S.C. §§ 1121-32, 1134-34s.

Again, however, as is the case with most of the other individual defendants, the complaint against Mothersill fails to plead any facts that, if taken as true, would give rise to an inference that a conspiracy existed or that Mothersill was a member of such a conspiracy. (28) Plaintiff's allegations against Mothersill are wholly conclusory and not only fail to indicate that Mothersill's actions constituted an "intentional and purposeful deprivation of constitutional rights," (29) but also appear to negate that Mothersill ever entered into the alleged conspiracy.

Plaintiff, in opposition to dismissal, advances the novel claim that she is unable to make more specific allegations "despite having ample information on which to base [them]," because "the mere allegation that a person is suspected of engaging in counterintelligence activities may be sufficient to prompt unstable persons of radical political persuasion to take violent action against even a mere suspect, and thus would

(28) See cases cited in note 16 supra.

(29) Griffin v. Breckenridge, 403 U.S. 88, 102 (1971); see cases cited in note 12 supra.

be tantamount to 'shouting fire in a crowded hall.'" This assertion clearly cannot be allowed to shield an obviously inadequate complaint from the consequences of its failure to state a claim. Plaintiff has twice amended the complaint at issue and has been afforded more than adequate opportunities to come forward with her cause of action. The complaint against defendant Mothersill is accordingly dismissed with prejudice.

PROFESSIONAL STAFF CONGRESS MOTION
FOR DISMISSAL OR FOR SUMMARY JUDGMENT

PSC, an unincorporated labor organization certified as the collective bargaining agent for teaching staff employees at CUNY, moves for summary judgment against the plaintiff, or, in the alternative, dismissal of the complaint for failure to state a claim upon which relief can be granted. Plaintiff alleges that individuals employed by the PSC acted unlawfully to cover up evidence of counterintelligence actions taken against her, withheld evidence of other unspecified invasions of her privacy and engaged in a conspiracy to cover up her union grievances. The PSC grievance counselor who represented plaintiff when her complaints against CUNY were submitted to arbitration is alleged to have presented her case inadequately and to have wrongfully failed to press plaintiff's claim of

discrimination in the arbitration proceedings. The PSC is also alleged to have exchanged confidential information concerning plaintiff with other defendants without obtaining her consent and thus to have impeded her litigation efforts. Finally, the PSC is alleged to have participated in the conspiracy to interfere with plaintiff's civil rights.

Many of these allegations obviously fail to state a claim upon which relief can be granted. But reading the complaint with liberality, three possible causes of action against the PSC suggest themselves. First, plaintiff charges the PSC with participation in a conspiracy to deprive her of her civil rights in violation of 42 U.S.C., section 1985. Second, she alleges that the PSC has directly discriminated against her in violation of Title VII of the Civil Rights Act, specifically section 2000e-2 of 42 U.S.C. Finally, the complaint may be read as attempting to charge the PSC with a breach of its statutory duty of fair representation.

At the outset, it is once again clear that plaintiff has not tendered factual allegations tending to show that the PSC participated in a conspiracy to deprive her of her civil rights. Indeed, the allegations against the PSC relating to its alleged participation in a conspiracy are so vague and

conclusory that they fail to establish a cause of action under
(30) section 1985. Moreover, plaintiff has not alleged that

defendant PSC was motivated by a "racial, or perhaps otherwise
class-based, invidiously discriminatory animus" to deny her
(31) equal protection of the laws. Plaintiff states that at
various times unspecified persons have grouped her with classes
to which she does not admit membership, such as "blacks," "gays"
and "atheists," but she nowhere alleges that the PSC ever re-
ferred to or considered her to belong to such a class or that
it actually conspired to discriminate against her because of
her sex, race, religion or any other characteristic that might
trigger the application of section 1985. Thus, plaintiff fails
to state a claim against the PSC under section 1985.

In addition, the PSC has submitted affidavits in
support of its motion for summary judgment that not only dis-
claim participation in any conspiracy but set forth facts in
explanation of its actions in connection with plaintiff's com-
plaints against the BHE. For example, the decision not to
press plaintiff's discrimination claim during arbitration is
averred to have been based on provisions of the union's contract

(30) See cases cited in note 16 supra.

(31) See note 29 supra.

with CUNY that preserve the confidentiality of the deliberations of academic committees passing upon appointments, reappointments, promotions and other matters. Indeed, subsequent to the arbitration of plaintiff's claims, the PSC litigated in the state courts the issue of whether the union contract precluded investigation into committee deliberations when a discriminatory dismissal was alleged, and the New York Court of Appeals held that an arbitrator's interpretation of the contract to this effect would not be overturned.⁽³²⁾ The PSC's good faith in not pressing the claim is further borne out by a document signed by plaintiff agreeing to withdraw a charge she had brought against the PSC before the New York State Public Employment Relations Board and recognizing that the PSC's failure to pursue her discrimination claim "constituted a recognition of limitations imposed by [the union] contract and in arbitration proceedings." Plaintiff's submissions in opposition to the motion for summary judgment fail altogether to controvert the PSC's good faith in not submitting the discrimination charge to arbitration and also fail to raise a material issue of fact concerning whether the PSC participated in a conspiracy against her. Indeed, far from setting "forth

(32) Professional Staff Congress/City University of New York v. Board of Higher Educ., 39 N.Y.2d 319, 383 N.Y.S.2d 592 (1976).

specific facts showing that there is a genuine issue for

(33)
trial," plaintiff's affidavit at most charges the PSC
with a negligent or even innocent failure to prosecute her
case vigorously, which does not give rise to a federal claim.
Plaintiff's only statement in opposition to the summary judg-
ment motion that relates to the section 1985 claim is: "I
further allege that PSC grievance counselor DeMealas acted
in conspiracy with BHE, Edel, and a number of other persons,
among them possibly Judith P. Vladeck and/or Steven Vladeck
[lawyers who represented plaintiff in connection with an

(34)
EEOC grievance]." This conclusory statement cannot operate
to raise a material issue of fact so as to require denial of
summary judgment. Neither does the fact that plaintiff appears
pro se and that her complaint is grounded on conspiracy preclude
(35)
the granting of the motion. Thus, were dismissal of

(33) Fed. R. Civ. P. 56(e).

(34) In her affidavit in opposition to the summary judgment motion, plaintiff refers to her lengthy "in camera statement" as containing material that gives rise to a material issue of fact concerning her conspiracy claim against the PSC. This so-called "in camera statement," however, does not refer to the PSC at all; rather, it deals exclusively with events that transpired prior to the time PSC became involved with plaintiff or with events totally unrelated to actions taken by the PSC.

(35) See Fed. R. Civ. P. 56(e); Morgan v. Sylvester, 125 F. Supp. 380, 389-90 (S.D.N.Y. 1954), aff'd, 220 F.2d 758 (2d Cir. 1955).

plaintiff's complaint against the PSC not granted, the PSC would nevertheless be entitled to summary judgment on the section 1985 claim.

Much of the above, of course, applies equally to any claim plaintiff may be said to have asserted under Title VII of the Civil Rights Act. Plaintiff's complaint does not contain sufficient allegations that the PSC discriminated against her on the basis of her race, color, religion, national origin or sex, nor does plaintiff provide any factual averments to that effect in opposition to the summary judgment motion.

It has been held that a union's breach of its duty of fair representation may render it liable under 42 U.S.C., section 2000e-2,⁽³⁶⁾ but a breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory or in bad faith.⁽³⁷⁾ Plaintiff, however, has

(36) E.g., *Macklin v. Spector Freight Systems, Inc.*, 478 F.2d 979, 988-89 (D.C. Cir. 1973); *United Rubber, etc., Workers v. NLRB*, 368 F.2d 12, 24 (5th Cir. 1966), cert. denied, 389 U.S. 837 (1967).

(37) *Vaca v. Sipes*, 386 U.S. 171, 190 (1967); *Jackson v. Trans World Airlines, Inc.*, 457 F.2d 202 (2d Cir. 1972); *Simberlund v. Long Island R.R.*, 421 F.2d 1219, 1225 (2d Cir. 1970);

neither specifically alleged that nor provided affidavits
or other evidence to the effect that the PSC did not repre-
sent her in good faith or that it discriminated against her. (38)
In sum, the PSC is entitled to dismissal of plaintiff's claim
that it breached its duty of fair representation and of any
claim plaintiff may have asserted under Title VII.

MOTION BY VLADECK DEFENDANTS
FOR SUMMARY JUDGMENT

Defendants Judith P. Vladeck and her law firm,
Vladeck, Elias, Vladeck & Lewis move for summary judgment
dismissing the complaint against them. The plaintiff's alle-
gations against these "Vladeck defendants" may be summarized
as follows. Plaintiff first charges that her lawyers, the
Vladeck defendants, misplaced and misprocessed an EEOC griev-
ance that they were to file for her and that, as a result,
EEOC consideration of plaintiff's claims was delayed.

FOOTNOTE 37 cont'd

Desrosiers v. American Cyanamid Co., 377 F.2d 864, 868 (2d
Cir. 1967); Bartels v. New York Lithograph & Photo-Engravers
Union No. One-P, 306 F. Supp. 1266, 1271 (S.D.N.Y. 1969),
aff'd, 431 F.2d 1205 (2d Cir. 1970).

(38) See cases cited in note 37 supra; Williams v. General Foods
Corp., 492 F.2d 399 (7th Cir. 1974); Lusk v. Eastern Prods.
Corp., 427 F.2d 705, 708 (4th Cir. 1970); Slagley v. Illinois
Central R.R., 397 F.2d 546, 552 (7th Cir. 1968).

Plaintiff alleges, "on information and belief," that this delay was "willful and part of a cover-up conspiracy."

Judith Vladeck is alleged to have suppressed evidence and discouraged, bribed or otherwise prevented unspecified witnesses from testifying for plaintiff in various proceedings, again as part of a conspiracy to deprive plaintiff of her rights. Finally, plaintiff claims that the Vladeck defendants, without her authorization, freely exchanged confidential information concerning her with the BHE and the PSC. This action allegedly had a detrimental effect on her litigation against the BHE and the PSC.

Plaintiff's claims thus fall into two categories: first, that the Vladeck defendants were guilty of professional malpractice in their handling of plaintiff's EEOC grievance against CUNY, and, second, that those defendants participated with others in a conspiracy to interfere with plaintiff's civil rights. The former claim is urged upon the Court as being pendent to the latter claim; the latter claim, insofar as it is legally cognizable, must be understood to assert violations of section 1985 of the Civil Rights Act.

Plaintiff's federal claim, however, fails to withstand the motion for summary judgment. Neither plaintiff's complaint,

nor her affidavits nor her lengthy "in camera statement" submitted to the Court set forth facts from which the existence of a conspiracy to deprive plaintiff of her civil rights could be inferred. (39) Nor is a single concrete fact alleged or averred that could tie the Vladeck defendants into such a conspiracy. The shortcomings of the complaint would warrant dismissal upon a motion to dismiss, and when they are in no way remedied by plaintiff's submissions in opposition to summary judgment, the defendants are entitled to be granted the relief requested. This is especially so where, as here, the defendants have come forward with particular facts rebutting the allegations in plaintiff's complaint. (40)

Although plaintiff has raised factual issues with respect to whether the Vladeck defendants undertook to represent her in connection with the filing of her EEOC grievance and whether the delay in filing that grievance constituted malpractice, the Court declines to take jurisdiction over this state law claim because plaintiff's complaint fails to present a federal claim of some substantiality arising out of the same

(39) See cases cited in note 16 supra.

(40) See note 35 supra.

(41)

nucleus of operative facts as the alleged malpractice.

EEOC DEFENDANTS' MOTION TO DISMISS

Seven employees of the EEOC who handled plaintiff's grievance against CUNY have moved for dismissal of the complaint against them for failure to state a claim upon which relief can be granted. Although plaintiff alleges that these individually named defendants "conspired with John/Jane Doe, other federal employees or members of organized crime or friends of theirs to whom they owe allegiance, to fail to prevent a conspiracy to interfere with [her] civil rights," she is, in reality, attacking the determination of lack of reasonable cause handed down by the EEOC on her various grievances. Thus, plaintiff's amended complaint charges that the EEOC's determinations were "in neglect of law and weight of evidence" and "further grossly inaccurate with regard to the statement of recorded facts, and handed down without obtaining testimony from Plaintiff's voluntary witnesses."

In support of her sweeping charges of conspiracy, plaintiff refers only to the "voluntary acts" of the individual

(41) Hagans v. Lavine, 415 U.S. 528, 536-43 (1974); Edelman v. Jordan, 415 U.S. 651, 653 n.1 (1974); United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966); Nolan v. Meyer, 520 F.2d 1276, 1278 (2d Cir.), cert. denied, 96 S. Ct. 567 (1975); IIT v. Vencap, Ltd., 519 F.2d 1001, 1015 (2d Cir. 1975).

employees "done directly to suppress evidence, discourage, bribe or otherwise prevent witnesses from testifying for Plaintiff, to alter or misplace records, neglect professional duties and their timely performance" and to unspecified "involuntary acts" also alleged to have violated her federal statutory and constitutional rights.

Even read liberally, the complaint contains no allegations that would sufficiently notify the EEOC employees of any claim plaintiff might have against them. Once again, despite specific directives to plaintiff in the dismissal of her original complaint, she has failed totally to satisfy the standards established by our Court of Appeals for alleging a conspiracy under the Civil Rights Act. (42) She has failed to set forth facts showing any intentional and purposeful deprivation of her rights or indicating the existence of a conspiracy in violation of section 1985. Indeed, plaintiff is attempting, through vague, speculative and conclusory allegations of a conspiracy, to obtain a review of the EEOC proceedings. That a plaintiff is willing to tack charges of a conspiracy onto allegations that the EEOC improperly found no basis to her

(42) See cases cited in note 16 supra.

'grievances cannot suffice to create a right of review in
(43)
the federal courts. Because the Court has given plain-
tiff ample opportunity to plead properly any charges she
may have against the EEOC defendants, her amended complaint
against them is dismissed with prejudice.

MOTIONS BY PRINCETON UNIVERSITY AND
MASSACHUSETTS INSTITUTE OF TECHNOLOGY
TO DISMISS THE COMPLAINT AGAINST THEM

Princeton University and Massachusetts Insti-
tute of Technology have also moved for dismissal of the
complaints against them on the grounds that plaintiff has
failed to state a claim upon which relief can be granted.
In her complaint in 75 Civ. 3840, plaintiff alleges on
"information and belief" that the philosophy faculties of
Princeton and Massachusetts Institute of Technology accepted
her for matriculation in their doctoral programs in 1975 and
1976, but that the administrations of these schools, complying
with directives of unspecified federal agencies, rejected her
applications even though she was the "most qualified applicant
under affirmative action" programs. These actions are alleged
to have been taken in furtherance of the widespread conspiracy
to deprive plaintiff of her civil and constitutional rights,

(43) See Morgan v. Sylvester, 125 F. Supp. 380, 387 (S.D.N.Y.
1954), aff'd, 220 F.2d 758 (2d Cir. 1955).

and they are asserted to have been acts of sexual and racial discrimination.

Again, however, plaintiff has failed to plead with even minimal particularity facts that would indicate the existence of a conspiracy against her or the involvement of the defendant educational institutions in such a conspiracy. (44) In addition, plaintiff's conclusory allegations that her rejections were the product of sexual or racial discrimination are wholly unsupported by any factual averments. (45) Indeed, plaintiff appears inferentially to concede that Princeton and Massachusetts Institute of Technology were accepting females under affirmative action programs, and thus that she was not rejected so much on account of her sex as in spite of it. Moreover, nothing in the complaint would indicate that the

(44) See cases cited in note 16 supra.

(45) See cases cited in note 11 supra. Plaintiff's allegations against Princeton and Massachusetts Institute of Technology charge them with violations of 42 U.S.C. § 1985(3) and, insofar as her rejections allegedly denied her equal protection of the laws, with violations of 42 U.S.C. § 1983. The complaint fails to state a claim under the Civil Rights Act on either theory, and it contains no allegations that would give rise to a cause of action based on denial of any constitutional right other than that of equal protection or based on any other statutory provisions.

. . . .
decisions not to accept her into the doctoral programs were due to some "racial, or perhaps otherwise class-based, invidiously discriminatory animus."⁽⁴⁶⁾ In her papers in opposition to the dismiss motions, plaintiff baldly asserts that she is entitled to judicial review of the question whether any discrimination prompted her rejections. But her mere suspicion of discrimination, not supported by any allegation of facts tending to substantiate it, cannot serve to withstand a motion to dismiss. Parties, whether government, corporations or individuals, should not be subjected to the heavy burdens of litigation unless there is a basis for the assertion of a claim.⁽⁴⁷⁾ Accordingly, the claims against Princeton University and Massachusetts Institute of Technology are dismissed with prejudice.

In sum, the complaints are dismissed against all the defendants in all actions except as to the defendants Edel, Newton, Kibbee, Koslow, Myers, Elias, Thornton, Hong

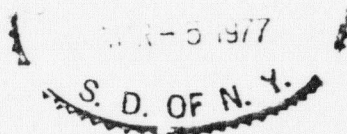
(46) Griffin v. Breckenridge, 403 U.S. 88, 102 (1971); see cases cited in note 12 supra.

(47) Morgan v. Sylvester, 125 F. Supp. 380, 390 (S.D.N.Y. 1954), aff'd, 220 F.2d 758 (2d Cir. 1955).

McLaughlin, Proshansky and Hillerbrand in actions 75 Civil
3840 and 75 Civil 4913.

Dated: New York, N. Y.
November 18, 1976

EDWARD WEINFELD
United States District Judge



PRO SE
3/22/77
77-7058

UNITED STATES COURT OF APPEALS

Second Circuit

Winf...
77-7058

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the Twenty-fourth day of March, one thousand nine hundred and seventy-seven.

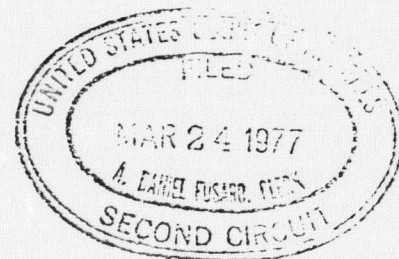
Anna Selma Vinje Morpurgo,

Appellant,

v.

Board of Higher Education, N.Y.C.,
et al.,

Appellees.



Appellant

A motion having been made herein by ~~XXXXX~~ pro se for a certificate of probable cause for leave to proceed in forma pauperis for transcription of the minutes at the expense of the United States for the assignment of counsel and for ~~XXXXX~~

Upon consideration thereof, it is

Ordered that said motion be and it hereby is denied in all cases. The appeal from the judgment entered in 75 Civ. 186 is dismissed. The appeal from the order entered in 75 Civ. 3840 and 75 Civ. 4913 is dismissed without prejudice to renewal once the district court has rendered a final judgment as to all defendants in those two suits.

TJM Markey Motley

Thomas J. Meskill
Thomas J. Meskill, U.S.C.J.

Howard T. Markey
Howard T. Markey, Ch. J. U.S. Court of
Customs and Patent Appeals

Constantine Baker
Constantine Baker, U.S.D.J. ~~XXXXXXXXXX~~

(A true copy,

R. Daniel Fusaro

Clerk

EXHIBIT 6.



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NEW YORK DISTRICT OFFICE
90 CHURCH STREET, ROOM 1301
NEW YORK, NEW YORK 10007

Annselm-Vinge Morpurgo^{1/}
312 East 81st Street
New York, N.Y. 10028

Charge Nos. TNY 4-0406, TNY 4-0435
TNY 4-0436, TNY 4-1138
Charging Party

vs.

City University of New York
Board of Higher Education
535 East 80th Street
New York, N.Y. 10021
ATTN: Paula Levitt

and

Professional Staff Congress/CUNY
25 West 43rd Street
New York, N.Y. 10036

Respondents

DETERMINATION

Under the authority vested in me by Section 29 CFR 1601.19b(d) of the Commission's Procedural Regulations (September 27, 1972), I issue, on behalf of the Commission, the following Determination as to the merits of the subject charge.

Respondents are an employer and labor organization, respectively, within the meaning of Title VII and the timeliness, deferral, and all other jurisdictional requirements have been met. Substantial weight has been accorded the findings of the New York State Division of Human Rights which dismissed Charge Nos. TNY 4-0435, and TNY 4-0436, for lack of jurisdiction, and with respect to charge no. TNY 4-1138, found no probable cause to believe the New York State Human Rights Law had been violated. Charging Party filed no formal complaint at New York State Division of Human Rights with respect to charge no. TNY 4-0406.

^{1/}Charging Party named numerous other organizations, associations and individuals as co-respondents. These charges are dismissed for lack of jurisdiction, as they are neither employers, employment agencies or labor organizations within the meaning of Title VII.

and

Professional Staff Congress/CUNY
Charge Nos. TNY 4-0406, 4-0435
4-0436, 4-1138

Charging Party alleges that Respondent Employer discriminated against her by harassment in terms and conditions of employment and by terminating her because of her race or color (unspecified), religion(Unitarian-Universalist), national origin(Italian) and sex(Female), and in retaliation for having opposed practices made unlawful by Title VII of the Civil Rights Act of 1964 as amended, all in violation of Title VII.

Respondent denies the allegation and states that Charging Party was terminated from her position as an adjunct lecturer because of "professional incompetence".

Charging Party alleges that because she promoted non-discrimination and affirmative action among other groups, she was retaliated against by Respondent Labor Organization because of their friendship with Respondent Employer and because of her race or color(unspecified), religion(Unitarian-Universalist), national origin(Italian) and sex(Female), in violation of Title VII.

Respondent Labor Organization denies the allegation.

Charging Party's allegations are unsubstantiated by the evidence in the record.

The record shows, with respect to Charging Party's termination, that Respondent Employer's Personnel and Budget committee, on the basis of unfavorable evaluations, recommended that Charging Party not be reappointed in the fall of 1972, because of professional incompetence. There was no evidence gathered during the investigation which shows that Charging Party was terminated as retaliation for her activities in support of women and blacks, as she has alleged.

There is no evidence in the record which substantiates Charging Party's allegations that Respondent Employer harassed and denied her equal terms and conditions of employment, in violation of Title VII. Charging Party submitted no objective evidence or testimony which substantiates those allegations.

Respondent Labor Organization states, and the record shows, that Charging Party filed a grievance which was processed by Respondent Labor Organization through to arbitration. These records show that the grievance was denied by the arbitrator.

City University of New York
Board of Higher Education

Page No. 3

and

Professional Staff Congress/CUNY
Charge Nos. TNY 4-0406, 4-0435
4-0436, 4-1138

The record is totally devoid of any evidence which supports Charging Party's allegations.

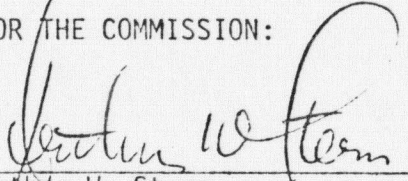
Based on the above, I conclude that there is not reasonable cause to believe Respondent Employer or Respondent Labor Organization engaged in unlawful practices in violation of Title VII of the Civil Rights Act, as alleged.

This determination concludes the Commission's processing of the subject charge. Should the Charging Party wish to pursue this matter further, he may do so by filing a private action in Federal District Court within 90 days of his receipt of Notice of Right-to-Sue which will be issued by the Department of Justice, and by taking the other procedural steps set out in that Notice of Right-to-Sue.

AUG 01 1975

Date

FOR THE COMMISSION:


Arthur W. Stern
District Director

8C

American Arbitration Association

VOLUNTARY LABOR ARBITRATION TRIBUNAL

In the Matter of the Arbitration between

BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK

and

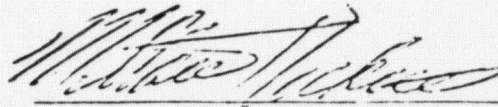
UNITED FEDERATION OF COLLEGE TEACHERS,
LOCAL 1460, AFL-CIO

CASE NUMBER: 1339 0155 73

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR ~~/~~, having been designated in accordance with the arbitration agreement entered into by the above-named Parties, and dated and having been duly sworn and having duly heard the proofs and allegations of the Parties, AWARDS as follows:

The Union's grievance, claiming that the nonreappointment of Adjunct Lecturer Annselm Vinje-Mopurgo violated Article XVII, Section 17.3, and Article XXV, Section 25.6 of the Agreement, is denied.



Arbitrator's signature (dated)

MILTON RUBIN

STATE OF **New York**
COUNTY OF **Westchester**

} ss.:

On this **27** day of **August**, **1973**, before me personally came and appeared **MILTON RUBIN**

to me known and known to me to be the individual ~~to~~ described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

EXHIBIT 8.

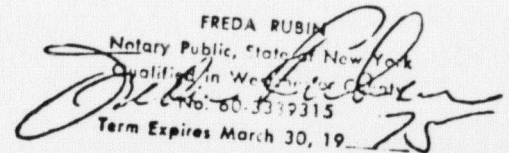
FREDA RUBIN

Notary Public, State of New York

Qualified in Westchester County

No. 60-3319315

Term Expires March 30, 1975



* * * * *

In the Matter of the Arbitration between *

BOARD OF HIGHER EDUCATION OF THE CITY OF *
NEW YORK

and

UNITED FEDERATION OF COLLEGE TEACHERS, *
LOCAL 1460, AFL-CIO *

* * * * *

O P I N I O N

and

A W A R D

Miss Annselm Vinje-Mopurgo taught as an Adjunct Lecturer in Philosophy in the Social Science Department of Queensborough Community College since the Spring semester of 1970. She was informed on April 13, 1972 that the Personnel and Budget Committee of the Department had voted that day not to recommend that she be reappointed to teach in the following Fall/1972 semester.

The Union grieved for Miss Vinje-Mopurgo that the failure to reappoint her had violated Articles XVII, Section 17.3 and XXV, Section 25.6 of the Agreement, and later added the charge of violation of Article VII. A Step I grievance meeting was held on May 9, 1972, with President Schmeller of the College finding that neither Article XVII nor Article XXV were violated. However, he referred the question to the P & B Committee to reconsider its action in light of the material Vinje-Mopurgo had submitted at the meeting, namely transcripts of tapes taken of her lectures, examination results and student evaluations on forms which she had developed and given to her students. The notification of the Committee's action and President Schmeller's letter of May 12, 1972 announcing his finding did not expressly report the reason for the failure to recommend reappointment.

* * * * *

On May 22, 1972, the Committee voted unanimously with the vote of five participating members (the former vote was unanimous with four participating members) not to change its former decision not to recommend reappointment. Vinje-Mopurgo was finally given official notification of this second decision on July 11.

The Union's Step II Grievance, with the added claim of violation of Article VII, was denied, and the Union requested arbitration. At the arbitration hearing held on June 11, 1973, the Union dropped its claim regarding Article VII. The parties were duly represented at the hearing, and post-hearing briefs were filed.

The question arose at the outset of the hearing concerning the reason why the appointment was not renewed. The Union requested a statement of the Board, with stress laid on the absence of any reason for the nonreappointment given to Vinje-Mopurgo. Since she under-

stood, however, that the reason was professional incompetence, the Union claims that the evaluations were not based upon proper implementation of Section 17.3 which provides for a timely recorded conference after each observation, and that there were not the required two unsatisfactory evaluations of the last three required by Section 25.6.

The Board took the initial position that the P & B Committee's action was an expression of academic judgment it need not defend under the *Nota Bene* in Article VI. Consequently, it need not give the nature of the judgment which can be academic though not concerned with teaching and classroom competence.

The Board questions the appropriateness of the Union's

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claim of violation of the two articles in view of its charge that it had never been told and still does not know why Vinje-Mopurgo was not reappointed. However, in response to the grievance, the Board holds that two of the last three semester evaluations were unsatisfactory, in effect, and that the evaluations for the three semesters were based on contractually proper observations and evaluations.

The evidence submitted in the hearing, and the exhaustive reviews and arguments made in the briefs, were carefully studied. The culminating determination is that the grievance should be denied on the following considerations which should answer the basic claims made by the parties.

Academic judgments relating to reappointment are not subject to arbitral review. Only their prerequisite procedure may be tested. Though the well-known Nota Bene does not state which procedure may be viewed, logically it is the process by which the judgment was made on whether to reappoint. Procedure noted by the Agreement is the process of observation on which evaluation is made each semester. Judgments not to reappoint Lecturers with more than one year's teaching for reason of incompetence must be justified by these evaluations. The one form of academic judgment contractually attached to this procedure is a finding on competence with the concomitant decision on appointment.

With this situation, I should think that it is incumbent upon the Board to identify the nature of the academic judgment or

defend the steps which culminated in the competence decision. The

Board in other matters before me has explained its academic judgments of factors other than classroom competence which affected the continued employment of teachers. Since the Board has taken the posture of not stating expressly why Vinje-Mopurgo was not reappointed, I, as Arbitrator in this Agreement, cannot compel the Board to do so, but must treat this matter as a failure to reappoint because of unsatisfactory professional performance. Were there another reason for the Committee's action, its expression in the hearing would have avoided the review of procedure.

The grievance experience indicates that competence must have been the concern of the P & B Committee. Vinje-Mopurgo's defense of her classroom performance in the Step I grievance meeting was not rejected as irrelevant, but given to the Committee for its reconsideration. Presumably, the Committee's decision to retain its initial

judgment was taken upon study of Vinje-Mopurgo's material on her classroom work.

Viewing the academic judgment related to the nonreal pointment, its derivation stands up basically as not arbitrarily nor discriminatorily based, and contractually proper. Evaluations of Vinje-Mopurgo preceded by the required observations and conferences were made for the last three semesters of Spring/71, Fall/71 and Spring/72.

Vinje-Mopurgo was observed by Professor Stabile on March 22, 1971, followed by an evaluation conference held with Professor White on March 23 with the memorandum dated on the same day. Vinje-Mopurgo signed that she had read the memorandum which included comments

being in circumstances before we had explained the academic influence
defending the steps which culminated in the conference decision. The

for changes in the content and organization of her lectures. Vinje-Mopurgo did not attach comments, though the memorandum records her defense, or explanation, of her classroom work.

Another observation was made on November 1, 1971, by Professor Selzer, with an evaluation conference and memorandum on November 15. Vinje-Mopurgo signed the memorandum on November 22 without affixing comment. As was the case with the previous memorandum, this one, though not clearly labeled as satisfactory or unsatisfactory, criticized content and presentation and recorded Vinje-Mopurgo's defense.

Vinje-Mopurgo was observed in the next semester on March 23, 1972, by Professor Hong. In the evaluation conference on April 6 with Professor Selzer, with the memorandum of the same date, Vinje-Mopurgo was told that her observed lesson was deemed to be unsatis-

factory. The memorandum reported the nature of the observer's criticism. Vinje-Mopurgo rejected the criticism and requested another observation; she refused to sign the memorandum. The "observation was deemed unsatisfactory."

Another observation was made on April 11 by Professor Evelyn Peterson who considered the session to be unsatisfactory. The evaluation conference on April 18, 1972, with the memorandum of the same date, discussed the conference with notation made of Vinje-Mopurgo's comments. She refused to sign the memorandum and did not file any comments. This memorandum also contained the express comment that "This observation was deemed unsatisfactory."

There is no question that Vinje-Mopurgo was duly observed and evaluated for the three semesters as provided by Section 17.3. Were the evaluations made as required by Section 25.6, if it be considered that nonreappointment was based on professional incompetence? The last Spring/72 evaluation was clearly critical in its judgment of the observed class in addition to having the unsatisfactory check contested by Vinje-Mopurgo.

The two previous evaluation memoranda do not expressly state whether the evaluations were satisfactory or unsatisfactory. They criticize Vinje-Mopurgo's teaching and, at the same time, take the occasion to find points to praise. In fact, these memoranda are so drafted as to be sources for either conclusion. However, on careful and repeated reading I have finally concluded that they have not.

indicated satisfactory performance; neither contained comment with which Vinje-Mopurgo did not have to take issue. Arbitrator Christensen's comments in his Opinion on an arbitration between the same parties (Geissler) aptly expresses my position. Though the Agreement is expiring and awaiting replacement by another, this comment should be cited here to stress the imperative need for clear and unmistakable administration to avoid the development of ambiguous situations which cannot be confidently determined even by Arbitrators:

With some misgivings, I have concluded that I must rule in favor of the Board. In a matter as important as a document which can be used to terminate employment, I find it difficult to understand why the responsible authority is unable to refer directly to the benchmark which the document is supposed to record, i.e., the satisfactory or unsatisfactory quality of the individual's professional performance. None of

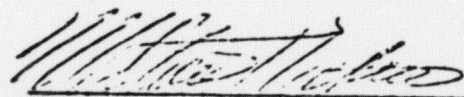
the three evaluation summaries specifically posits either of those conclusions. On balance, however, I consider their critical comments to constitute an unfavorable judgment...In the context of the language of the evaluation summaries themselves, however, they tip the balance to a finding that the contingency mandated by paragraph 25.6 was met, if only barely.

I cannot conclude without adding the observation that while the newness of the parties' contractual relationship and the procedures contained therein might excuse some looseness in the actual conduct of those procedures, the fact that evaluation summaries are of such direct importance to continued employment and the experience of this case would lead me in the future to disregard, for the purposes of paragraph 25.6, any such summary that did not directly if not in haec verba warn the individual of the fact of unsatisfactory professional performance. The Board is entitled to maintenance of its standards of performance but the essence of the observation and evaluation provisions of the Agreement is that the individual be advised of any deficiencies and be given opportunity to correct them as well as having notice of the price of their continuance.

A W A R D

The Union's grievance, claiming that the nonreappointment of Adjunct Lecturer Annselm Vinje-Mopurgo violated Article XVII, Section 17.3, and Article XXV, Section 25.6 of the Agreement, is denied.

August 27, 1973


MILTON RUBIN, Arbitrator

THE CITY UNIVERSITY OF NEW YORK

AGREEMENT BOARD OF HIGHER EDUCATION

AND

UNITED FEDERATION OF COLLEGE TEACHERS

PREAMBLE

AGREEMENT entered into this day of 1969 by and between the BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK (hereinafter referred to as the "Board"), and the UNITED FEDERATION OF COLLEGE TEACHERS, LOCAL 1460, AFL-CIO (hereinafter referred to as the "Union").

WITNESSETH:

WHEREAS, the Board has had a long-standing policy that there exists an academic community of interest and that such community of interest includes the Instructional Staff, and

WHEREAS, the Board has been recognized as a "Public Employer" consistent with the terms and provisions of the Public Employees' Fair Employment Act of the State of New York, and

WHEREAS, the Board elected to come under the rules of procedure and regulations of the New York State Public Employment Relations Board, and

WHEREAS, a secret ballot election was conducted by the New York State Public Employment Relations Board, and

WHEREAS, the members of the Instructional Staff in the unit hereinafter set forth freely selected the Union as their representative for the purposes of collective negotiations and the settlement of grievances, and

WHEREAS, the Board and the Union subscribe to the concepts of Academic Freedom as expressed by the AAUP as follows:

(a) The teacher is entitled to full freedom in research and in the publication of the results, subject to the adequate performance of his other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.

(b) The teacher is entitled to freedom in the classroom in discussing his subject, but he should be careful not to introduce into his teaching controversial matter which has no relation to his subject.

(c) The college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he speaks or writes as a citizen, he should be free from institutional censorship or discipline, but his special position in the community imposes special obligations. As a man of learning and an educational officer, he should remember that the public may judge his profession and his institution by his utterances. Hence he should at all times be accurate, should exercise appropriate restraint, should show respect for the opinion of others, and should make every effort to indicate that he is not an institutional spokesman.

NOW, THEREFORE, it is agreed as follows:

ARTICLE I

BOARD - UNION RELATIONSHIPS

1.1 The Board and the Union agree to maintain the academic character of the University as an institution of higher education.

1.2 Nothing contained in this Agreement shall be construed to diminish the rights granted under the Bylaws of the Board to the entities and bodies within the internal structure of CUNY so long as such rights are not in conflict with this Agreement. If provisions of this Agreement require changes in the Bylaws of the Board, such changes will be effected.

1.3 If there is an inconsistency or conflict between the Bylaws of the Board and this Agreement, the provisions of this Agreement shall apply.

1.4 The Board will furnish the Union an advance copy of the agenda of each regular meeting of the Board, as well as copies of the minutes of such meetings.

1.5 The Union may request to be heard by the Board at a regularly scheduled meeting, in order to speak to any item on the Board agenda, provided that such request is made known to the Board Chairman at least three (3) days prior to the meeting.

ARTICLE II RECOGNITION

2.1 The Board recognizes the Union as the exclusive collective negotiation representative of a unit which comprises:

Lecturer
Teaching Assistant
Excluded: All other employees

2.2 It is understood that nothing contained in this Article shall be construed to prevent the Board or any Board official from meeting with any individual or organization to hear views on any matters, except that as to matters so presented which are proper subjects of collective negotiations, any changes or modifications shall be made only through negotiation and agreement with the Union.

ARTICLE III UNIT STABILITY

3.1 The classification of Lecturers as part of the present collective negotiation unit will remain for the duration of this Agreement.

3.2 Any group of Lecturers now in this unit whose group classification is changed during the life of this Agreement will remain in this unit for the duration of this Agreement.

ARTICLE IV CHECK-OFF

4.1 The Board agrees to the principle of the check-off of Union dues for all members of this unit in amounts to be determined by the Union and in accordance with forms and procedures as approved by the Comptroller's Office of the City of New York.

ARTICLE V CONSULTATION

5.1 The Chancellor or his designee shall meet with representatives of the Union twice each semester for the purpose of discussing legitimate and proper subjects of collective negotiations that may arise during the life of this Agreement and to discuss those matters necessary to the implementation of this Agreement which are University-wide in nature. Other matters may be placed on the agenda and considered at the discretion of the Chancellor.

5.2 A written agenda shall be submitted by the Union no less than five (5) days before the scheduled date of the meeting.

5.3 The President or Provost or his designee shall meet with representatives of the Union twice each semester for the purpose of discussing legitimate and proper subjects of collective negotiations that may arise during the life of this Agreement and to discuss those matters necessary to the implementation of this Agreement which are local in nature. Other matters may be placed on the agenda and considered at the discretion of the President.

5.4 A written agenda shall be submitted by the Union no less than five (5) days before the scheduled date of the meeting.

5.5 Nothing contained herein shall prevent the Union from consulting with the Chancellor and the College Presidents or Provosts, or designees at times other than those set forth above, if matters within the area of collective negotiations arise of an urgent or emergency nature.

ARTICLE VI GRIEVANCE PROCEDURE AND ARBITRATION

6.1 INTENT

The Board and the Union agree that they will use their best efforts to encourage the informal and prompt settlement of complaints and grievances which may arise between the Union, the employees and the Board. The orderly processes hereinafter set forth will be the sole method used for the resolution of all complaints and grievances.

6.2 DEFINITIONS

A *complaint* is an informal claim by an employee in the bargaining unit, or by the Union of improper, unfair, arbitrary or discriminatory treatment.

A *complaint* may, but need not, constitute a *grievance*. Complaints shall be processed through the informal grievance procedure as herein set forth.

A *grievance* is an allegation by an employee or the Union that there has been:

- (1) a breach, misinterpretation or improper application of the terms of this Agreement; or
- (2) an arbitrary or discriminatory application of, or a failure to act pursuant to, the Bylaws and written policies of the Board related to the terms and conditions of employment.

6.3 INFORMAL PROCEDURE FOR HANDLING COMPLAINTS

Any employee in the bargaining unit may present and discuss his complaint either with or without representative of the Union. Similarly, a representative of the Union may present and discuss a complaint on behalf of any employee or group of employees with the head of the Department involved and shall be entirely informal. Any settlement, withdrawal or disposition of a complaint at this informal stage shall not constitute binding precedent in the settlement of similar complaint or grievances.

6.4 FORMAL PROCEDURE FOR HANDLING GRIEVANCES

Grievances may be filed by an employee in the bargaining unit on his behalf, or by the Union on its behalf, or on behalf of any employee or group of employees in the bargaining unit. Grievances involving employees in more than one College of the University may be filed by the Union initially at Step 2 of the grievance procedure.

A grievance must be filed by an employee or the Union within a reasonable time from the date it was found to exist. Any grievance not processed in accordance with the time limits specified herein shall be deemed waived by the grievant.

Step 1. A grievance must be stated in writing setting forth the basis therefore, and the remedy requested. All grievances shall be filed with the President of the College affected or his designee. The President or his designee shall within seven (7) calendar days of receipt of the grievance meet with the grievant and a representative of the Union for the purpose of discussing the grievance. The President or his designee shall within seven (7) calendar days after the grievance meeting issue his decision with reasons in writing to the grievant and the Union.

Step 2. If the grievance has not been settled at Step 1, then within seven (7) calendar days after receipt of the written decision of the President of the College or his designee, or the expiration of the time limits for making such decision, the grievant or the Union may submit the grievance in writing to the Chancellor or his designee, together with a copy of the decision of the President of the College affected, or his designee. The Chancellor or his designee shall within seven (7) calendar days of the receipt of the grievance meet with the grievant and a representative of the Union for the purpose of discussing the grievance. The Chancellor or his designee shall within seven (7) calendar days after the grievance meeting issue his decision with reasons in writing to the grievant and the Union.

EXHIBIT 9

Nota Bene:

Grievances relating to appointment or reappointment which are concerned with matters of academic judgment may not be processed by the Union beyond Step 2 of the grievance procedure. Grievances within the scope of these areas in which there is an allegation of arbitrary or discriminatory use of procedure may be processed by the Union through Step 3 of the grievance procedure. In such case the power of the arbitrator shall be limited to remanding the matter for compliance with established procedures. It shall be the arbitrator's first responsibility to rule as to whether or not the grievance relates to procedure rather than academic judgment. In no event, however, shall the arbitrator substitute his judgment for the academic judgment. In the event that the grievant finally prevails, he shall be made whole.

6.5 Step 3. Arbitration. If the grievance has not been settled at Step 2, then within seven (7) calendar days after the receipt of the written decision of the Chancellor or his designee, the grievant or the Union may request arbitration by giving notice to that effect, by registered mail, directed to the Chancellor or his designee and to the Arbitration Panel. The Arbitration Panel shall be jointly chosen by the Board and the Union, and shall consist of three (3) members who are familiar with the customs, practices, nature and spirit of the academic community. Each member is to serve in turn as sole arbitrator for a given case. Where a member of the Panel is unable to serve for any reason, the next member in sequence shall then serve. The arbitration procedure shall be in accordance with the rules of the American Arbitration Association. In no event shall the arbitrator have authority to add to, subtract from, modify or amend the provisions of this Agreement or the Bylaws of the Board. A final decision or award of the arbitrator shall be made within thirty (30) calendar days after the closing of the hearing. Such decision or award shall be binding upon the Union, the Board, and the employees affected thereby. The cost of arbitration shall be borne equally by the parties. Expenses for witnesses, however, shall be borne by the party who calls them.

ARTICLE VII NONDISCRIMINATION

7.1 Neither the Board nor the Union will interfere with, restrain or coerce the employees covered by this Agreement because of membership in or non-membership in, or lawful activity on behalf of the Union. The Board will not discriminate in respect to hire, tenure of employment or any terms or conditions of employment of any employee covered by this Agreement because of sex, race, age, national origin, religion, political belief or membership in, or lawful activity on behalf of the Union, nor will it discourage or attempt to discourage membership in the Union.

7.2 The Union agrees that it will admit to membership and represent equally all employees in the bargaining unit.

ARTICLE VIII INFORMATION AND DATA

8.1 The Board shall make available to the Union upon its reasonable request and within a reasonable time thereafter such statistics and financial information related to the collective negotiation unit and in possession of the Board as are necessary for negotiation and implementation of a collective negotiation agreement. It is understood that this shall not be construed to require the Board to compile information and statistics in the form requested not already compiled in that form unless mutually agreeable.

ARTICLE IX RELEASED TIME

9.1 The Board shall grant released time at each college to the Union Chapter Chairman or his designee for the implementation of this contract and the handling of grievances, to the extent of the weekly contact hours of one course, not to exceed three contact hours. Such released time may not be used to solicit union membership.

9.2 The designee must be made known to the University at the beginning of the semester preceding the semester for which released time is requested. In order to be eligible for released time, the individual must be an employee within this unit and may be released from scheduled time worked in the title of Lecturer only.

9.3 In order to be eligible for released time, the individual must carry a minimal schedule of five contact hours from which he may be released from one course.

ARTICLE X USE OF COLLEGE FACILITIES

10.1 Upon request to the President or his designee, the college chapter of the Union shall be permitted to meet at the college if appropriate facilities are available. All requests must be in writing, wherever possible, three (3) days prior to the requested meeting.

10.2 The Union shall be permitted to use college mailroom facilities for the distribution of Union communications.

10.3 At each college campus, the President or his designee shall assign a bulletin board for the exclusive use of the Union for the purposes of posting Union notices. It is agreed that the number of Union bulletin boards at each college campus shall not exceed four. However, the Union shall be entitled to post notices on existing college bulletin boards customarily used for general notices to faculty, such as in the Faculty Lounge and in the Faculty Dining Room.

ARTICLE XI LEAVE OF ABSENCE FOR UNION OFFICERS

11.1 Members of the Instructional Staff who are or shall become during the life of this Agreement University-wide elected or appointed officers of the Union, shall upon proper application be granted a special leave of absence without pay, for not less than one semester for the purpose of performing legitimate duties for the Union. Those who are granted leaves of absence without pay shall receive credit toward annual salary increments on the schedules appropriate to their rank. The Board

agrees to recommend to the appropriate retirement program that such time be granted service credit for retirement purposes and that the employees receiving such leave of absence be permitted to pay regular monthly contributions based upon their earnable salaries as members of the teaching staff for the period of such leave.

11.2 No more than three University-wide officers shall be simultaneously on leave of absence under this provision with no more than one person from any given college.

11.3 If in the event any of the University-wide officers shall not be eligible under leave regulations, the Board shall guarantee reemployment for one year upon termination of the leave of absence provided that the employee granted such leave of absence has been employed for a minimum of two years prior to taking the leave of absence. Such time shall not be counted in computing eligible time and service of a Lecturer for the award of certificate of continuous appointment by the Board.

ARTICLE XII WORKLOAD

12.1 Employees on the teaching staff of the City University of New York shall not be required to teach an excessive number of contact hours, assume an excessive student load, or be assigned an unreasonable schedule, it being recognized by the parties that the teaching staff has the obligation among others to be available to students, to assume normal committee assignments, and to engage in community service.

ARTICLE XIII CLASSIFICATION OF TITLES

13.1 The title Lecturer (full-time) shall be a tenure-bearing (certificate of continuous employment) title used for full-time members of the faculty who are hired to teach and perform related faculty functions but do not have a research commitment. Lecturers, who in the past have taught a full-time program based on their departmental standards, shall be included in this title regardless of the prior or current method of payment of compensation. A certificate of continuous employment shall be granted in accordance with provisions of Article XXV. Persons appointed to this rank shall be entitled to all faculty retirement and other fringe benefits and shall be scheduled in accordance with provisions of Article XII.

13.2 The title of Lecturer (part-time) shall be used only for people who are working towards a doctorate on a full-time basis and are to be employed as part-time teaching or research personnel. Such a teaching commitment shall not exceed seven contact hours a semester; a research commitment shall not exceed fifteen hours a week. Appointment to this title shall be limited to three years. Individuals who were employed in this category prior to the signing of this Agreement shall begin their three-year period from the effective date of this Agreement.

13.3 The regular full-time academic title shall be used for those members of the full-time Instructional Staff of a college within the City University who assume teaching or related assignments in a University session

which are in addition to normal full-time assignments. The extent of such additional assignments shall be limited by the multiple position regulations of the Board.

13.4 The title of Adjunct Lecturer, Adjunct Assistant Professor, Adjunct Associate Professor or Adjunct Professor shall be used for people who are not full-time members of the City University of New York faculty and who teach part-time or who have other part-time assignments in the University. The assignment of title shall depend on meeting the relevant academic qualifications as stipulated in the Bylaws of the University.

13.5 The title Lecturer may not be used for non-instructional functions.

ARTICLE XIV SERVICE CREDIT TOWARD SABBATICAL LEAVE ELIGIBILITY

14.1 The Board will grant service credit toward eligibility for sabbatical leave for all members of this unit on the following basis:

- (a) A Lecturer (full-time) shall be eligible for sabbatical leave.
- (b) Each year of service as a Lecturer (full-time) shall be credited as one year of the six-year eligibility requirement.
- (c) Service as a Lecturer (part-time) shall be credited on the basis of one-half year service eligibility for each full year of employment.

ARTICLE XV ANNUAL LEAVE

15.1 Lecturers (full-time) who have taught for a full year (September - June) and who have been paid against an annual salaried budget line shall be entitled to the same vacation allowance as other members of the faculty.

15.2 Effective July 1, 1971 Lecturers (full-time) who have taught for a full year (September - June) shall be entitled to the same vacation allowance as other members of the faculty whether paid against an annual salaried budget line or any other tax levy line.

15.3 Effective July 1, 1971 Lecturers (part-time) who have taught for a full year (September - June) shall be entitled to the same vacation allowance as other members of the faculty.

15.4 Lecturers (part-time) whose titles shall be changed to Adjunct Lecturer, Adjunct Assistant Professor, Adjunct Associate Professor and Adjunct Professor shall not be entitled to vacation pay.

ARTICLE XVI NOTICE OF APPOINTMENT AND REAPPOINTMENT

16.1 The decision of the Board to reappoint or not to reappoint persons in the titles Lecturer (full-time) and Lecturer (part-time) shall be communicated in writing to the person affected not later than April first preceding the expiration of the first full year of service, and not later than December first of each succeeding year.

16.2 The decision of the Board to reappoint with tenure (certificate of continuous employment) or not to reappoint persons in the title Lecturer (full-time) for the sixth full year shall be communicated in writing to the person affected not later than December first preceding the expiration of the fifth full year of service.

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16.3 Where an appointee begins his service prior to September first, the tenure (certificate of continuous employment) period shall not begin until the succeeding September first; and when an appointment is made during the month of September, the appointment shall date as of September first for the purpose of tenure.

16.4 Employees in adjunct titles shall be notified of non-reappointment or rescission of previously proffered appointment in accordance with the following time table:

- (a) Those employees who are not to be re-appointed because of poor evaluation shall be notified in the Fall semester not later than December 15 and in the Spring semester not later than May 15.
- (b) Those employees who are not to be re-appointed because of insufficient registration, financial inability or changes in curriculum shall be notified as soon as the college administration is aware of the situation.

ARTICLE XVII PROFESSIONAL EVALUATIONS

17.1 All evaluations of the professional activities of the employee shall be in writing.

17.2 At least once each semester each employee shall be evaluated on the basis of at least a one hour observation of the work of the employee. The employee shall be given 24 hours of prior notice of observation.

17.3 The department chairman within a period of three weeks from the date of the observation shall discuss the evaluation with the employee who shall have the right to present any material he feels is pertinent to the proper consideration of the nature and scope of the evaluation. Immediately following the discussion of the evaluation with the employee, the chairman shall prepare a record of the discussion in memorandum form.

17.4 Such memorandum shall become a part of the employee's personal file in accordance with the conditions for making it a part of such file as set forth under provisions made for Personnel Files (Article XVIII).

17.5 At least once each year, each employee shall have an evaluation conference with his department chairman. At such conference the employee's total academic and professional progress for that year and cumulatively to-date shall be reviewed. A review of the second observation may be part of such conference. Immediately following this discussion, the chairman shall prepare a record of the discussion in memorandum form.

17.6 Such memorandum shall become a part of the member's personal file in accordance with the conditions for making it a part of such file as set forth under provisions made for Personnel Files (Article XVIII).

17.7 If a grievance involving a personnel decision based on a written evaluation reaches the level of the Chancellor's Office, the grievant and his representative shall be given the right to read, but not to retain, a true copy of the original written evaluation and or evaluations.

ARTICLE XVIII PERSONNEL FILES

18.1 Each unit within the City University shall maintain two personnel files for each employee.

18.2 There shall be a *personal file* which shall include but not be limited to the following:

- (a) Personal information.
- (b) Information relating to the employee's academic and professional accomplishments submitted by the employee or placed in the file at his request.
- (c) Records generated by the college.
- (d) Memoranda of discussions between the employee and his department chairman relating to evaluations of the employee's professional performance.

No materials shall be placed in the employee's personal file until the employee has been given the opportunity to read the contents and attach any comments he may so desire. Each such document shall be initialed by the employee before being placed in his file as evidence of his having read such document. This initialing shall not be deemed to constitute approval by the employee of the contents of such document. If the employee refuses to initial any document after having been given an opportunity to read the same, a statement to that effect shall be affixed to the document.

The personal file shall be available for examination by the employee at his request.

18.3 There shall be a separate *administration file* which shall contain:

- a. All materials requested by the unit of the City University or supplied by the employee in connection with the employee's original employment.
- b. All observation reports of the employee's academic and professional performance.

The administration file shall be available only to the committees and individuals responsible for the review and recommendation of the employee with respect to appointment or reappointment.

ARTICLE XIX NOTICE OF VACANCIES

19.1 A notice of vacancy in the title Lecturer (full-time) shall be posted on the Departmental bulletin boards used by all sessions of the department in which the vacancy occurs.

ARTICLE XX JURY DUTY

20.1 Employees who are required to serve on a jury, or are required to report to Court in person in response to a jury duty summons, or are required to report for jury examination, or to qualify for jury duty, shall receive their regular salary during such absences provided that they remit to the Board an amount equal to the compensation received by them, if any, for jury duty.

ARTICLE XXI FACILITIES FOR FACULTY

21.1 The Board recognizes the problem of providing adequate space and facilities for faculty and will request the President to establish a committee on each campus to analyze the space and facilities problem, and to chart specific progress towards those ends listed below. Such committee shall have Union representation.

- (a) A minimum of 120 square feet of private, enclosed office space shall be provided for each full-time member of this unit. No more than two full-time persons shall be assigned to each office.
- (b) Each office for full-time members of this unit shall be equipped, furnished and lockable. Such equipment shall include, but not be limited to: desks, chairs, file cabinet, telephone, supplies, bookshelves, etc. Wherever possible, access to a typewriter shall be provided.
- (c) A minimum of one telephone line with individual extensions shall be provided for each two full-time members of this unit for both intra-college and outside calls.
- (d) A minimum of one secretary shall be provided for each five full-time members of this unit. Proportionate secretarial services shall be provided for part-time members of this unit.
- (e) Each building shall provide suitably equipped faculty lounges and rest rooms which shall be available to the entire instructional staff. These facilities shall be cleanly and properly maintained. They shall also be lockable and a key made available to every member of the Instructional Staff assigned to the building. Suitable dining facilities shall be available at each campus providing wholesome food at reasonable prices.
- (f) Each member of the unit employed on a part-time basis shall have office facilities including a desk made available to him at the time he is on campus. Part-time members shall also be provided with a locker or lockable space for the storage of personal

belongings and professional materials. Such space shall also include at least one drawer of a filing cabinet.

ARTICLE XXII STAFF HOUSING AND PARKING

22.1 The Board recognizes the housing problem on each campus for faculty, staff and students and will request the President to establish a committee on each campus to analyze the housing problem and to chart specific progress toward the solution of this problem. Such committee shall have Union representation.

22.2 The Board recognizes the parking problem on each campus for faculty, staff and students and will request the President to establish a committee on each campus to analyze the parking problem and to chart specific progress toward the solution of this problem. Such committee shall have Union representation.

23.1

ARTICLE XXIII SALARY SCHEDULES Senior and Community Colleges LECTURER (FULL-TIME)

10/1/69	10/1/70	10/1/71
\$11,000	\$11,950	\$12,700
11,850	12,800	13,550
12,450	13,400	14,150
13,000	14,000	14,750
13,650	14,600	15,350
14,250	15,200	15,950
14,850	15,800	16,550
	16,400	17,150

Incumbents, on October 1, 1969, shall be placed on the next higher step of this schedule and receive one additional increment. Incrementation after salary slotting shall be as of January 1 of each year except that there shall be no increment on January 1, 1970.

23.2 LECTURER (PART-TIME)

10/1/69	10/1/70	10/1/71
\$5,500	\$5,925	\$6,350
5,925	6,400	6,775
6,225	6,700	7,075
6,500	7,000	7,375
6,825	7,300	7,675

3

Incumbents in the title of Teaching Assistant, on October 1, 1969, shall be slotted as follows:

- (a) new appointees at \$5,500
- (b) one or more years of prior service at \$5,925

As of July 1, 1970 all new appointments shall be made to the new title and in accordance with the then existing salary schedule.

23.3

ADJUNCT AND PROFESSIONAL TITLES

	10/1/69	9/1/70	9/1/71
Instructor, Lecturer,	\$14 (\$210)	\$16 (\$240)	\$19 (\$285)
Adjunct Lecturer	15 (\$225)	17 (\$255)	20 (\$300)
	16 (\$240)	18 (\$270)	21 (\$315)
Assistant Professor,	17 (\$255)	19 (\$285)	22 (\$330)
Adjunct Assistant Professor	18 (\$270)	20 (\$300)	23 (\$345)
Associate Professor,	19 (\$285)	21 (\$315)	24 (\$360)
Adjunct Associate Professor	20 (\$300)	22 (\$330)	25 (\$375)
	21 (\$315)	23 (\$345)	26 (\$390)
Professor, Adjunct Professor	22 (\$330)	24 (\$360)	27 (\$405)
	23 (\$345)	25 (\$375)	28 (\$420)
	24 (\$360)	26 (\$390)	29 (\$435)

() = semester hour rate

23.4 The following provisions shall apply for all hourly-paid members of this unit:

- (a) All classroom teachers below new minimum move to the new minimum for their respective currently slotted rank.
- (b) People off step move to the next higher dollar rate step.
- (c) If the resultant rate increase is less than \$3.00 per hour, the rate shall be adjusted to move to the next higher step which provides a \$3.00 increase.
- (d) However, the new rate may not exceed the scheduled maximum for the rank.
- (e) Increments within rank shall be automatic at the next September first following a full-year of employment.
- (f) Changes in titles shall be made effective in the next fiscal year beginning July 1, 1970.

23.5 Special Groups

- (a) *Lecturer - fractional schedules*
Since it is the intent of the parties to agree to the discontinuance of the fractional use of lines, e.g., 3/5's, 2/3's, etc. of a full-time schedule, effective with the beginning of the Fall 1970 semester, it is agreed that Lecturers teaching such fractional schedules in the academic year 1969-1970 shall be given preference in consideration for such Lecturer (full-time) openings which are available in their respective departments for the academic year 1970-1971. For the academic year 1969-1970, Lecturers teaching fractional schedules shall receive an October 1, 1969 increase as a

proration of that salary step which would have been applicable had they been employed full-time.

- (b) *Counselors*
 - (1) *Psychological Counseling* - shall be remunerated in accordance with the newly established schedule and in accordance with the stated guidelines.
 - (2) *Curricula and Student Activity Counseling* - shall be remunerated in accordance with the newly established schedule and in accordance with the stated guidelines at the rate of 60% of that newly established schedule.
- (c) *Professional Library Staff*
Associate Professors, Assistant Professors and Instructors shall be remunerated in accordance with the newly established schedule and in accordance with the stated guidelines at the rate of 60% of that newly established schedule.
- (d) *Professional Registrar's Staff*
Associate Registrars and Assistant Registrars shall be remunerated in accordance with the newly established schedule and in accordance with the stated guidelines at the rate of 60% of that newly established schedule.

Both parties agree that the work required from these staffs during the registration period is an integral part of the total job. Thus, every effort shall be made to minimize compensable time for this group during registration periods. Necessary coverage is to be achieved through work schedule changes.

- (e) *Professional Business Management Staffs*
Assistant Business Managers and Assistant to Business Managers shall be remunerated in accordance with the newly established schedule and in accordance with the stated guidelines at the rate of 60% of that newly established schedule.

Both parties agree that the work required from these staffs during peak periods, such as registration, budget preparation, etc., is an integral part of the total job. Thus, every effort shall be made to minimize compensable time for this group during these peak periods. Necessary coverage is to be achieved through work schedule changes.

- (f) *College Laboratory Technicians* * - shall be remunerated for work performed in special sessions (evening, summer) beyond their normal assignments at a semester hour rate. Such semester hour rate is to be computed from the annual salary base of each individual by first determining the hourly rate and then converting this hourly rate to a semester hour rate. The hourly rate is to be 1/1500 of the annual salary base rounded to the next highest half dollar.

* This generic title, pending Board Bylaw change, includes the following current titles: College Engineering Technician, College Science Technician and College Science Assistant.

ARTICLE XXIV WELFARE BENEFITS

24.1 Lecturers (full-time) shall be eligible for welfare benefits as provided through the CUNY Faculty Welfare Trustees beginning with their second full year of employment.

24.2 The Board will provide moneys on a per capita basis.

24.3 The Board shall contribute \$225 per capita to the City University Faculty Welfare Trustees in the first contract year for eligible employees. This shall be increased by \$20 the second year for a total contribution of \$245 per capita; and in the third year the Board shall increase its contribution by \$55 for a total contribution of \$300 per capita.

24.3 The Board will make every effort to secure full coverage of the health and hospitalization plans of the City of New York for all members of this unit who teach at least six hours and are not covered by a wholly paid employer plan.

ARTICLE XXV JOB SECURITY

25.1 All members of this unit who prior to September 1, 1969 have served as teacher or counselor in the title of Lecturer, paid from tax levy funds, for five or more years, or ten or more semesters, of continuous full-time appointments and who have been reappointed as of September 1, 1969 for an additional full-time service shall be granted an administrative certificate of continuous employment by the Board effective September 1, 1969.

Thereafter, eligibility for such a certificate of continuous employment shall be based on a sixth full-time appointment in the title of Lecturer preceded by five years of continuous appointments. In computing eligible time in service, such time shall commence with the first September of appointment.

25.2 Where a person has taught on a full-time basis five or more years cumulatively since 1961 and is currently teaching full-time, such person may be granted a certificate of continuous employment beginning with the next full-time appointment. This provision shall be deemed to be inoperative after September 1, 1971.

25.3 Where service has been continuous and a break in full-time service has occurred by virtue of a reduced schedule, such less than full-time service shall be prorated towards its equivalency in full-time service.

25.4 The certificate of continuous employment shall be valid only in that college which makes the certification or sixth appointment and shall carry with it the guarantee of full-time reappointment subject to continued satisfactory performance, stability in academic program, sufficiency of registration and financial ability.

25.5 The terms of this article do not apply to service in any other title than Lecturer.

25.6 Effective one year after initial appointment, no member of this unit, full-time or part-time, shall be denied reappointment on the basis of professional incompetence unless he has been evaluated during at least three semesters (including the first year of appointment) according to provisions contained in this Agreement, Article XVII, and unless two of the last three evaluations indicate unsatisfactory professional performance.

25.7 For the purposes of this provision (25.6), September 1969 shall constitute the initial appointment year, except that those part-time Lecturers who have served for the past five consecutive years or ten consecutive semesters and who have been reappointed as of September 1969, shall be deemed to have demonstrated satisfactory performance for the purposes of this provision.

ARTICLE XXVI PREFERENTIAL REHIRING

26.1 The following departmental preferential rehiring policy shall govern part-time members of this unit:

- (a) In the event of the cancellation of a class because of financial inability, insufficient enrollment or changes in curriculum, departmental preferential rehiring will be established for identical or remedial courses which the individual staff member has taught.

- (b) All individuals affected by such a reduction in force shall be placed on a departmental preferential rehiring list established by date of initial employment.
- (c) A list of vacancies within a department shall be posted on the departmental office bulletin board and be subject to periodic up-dating.
- (d) The individual is to be responsible for securing information as to his position on a departmental preferential rehiring list and must apply for any available position through the department chairman.
- (e) The individual's name on a departmental preferential rehiring list shall be deleted after three years.

ARTICLE XXVII LECTURERS EMPLOYED IN THE LIBRARIES

27.1 In the Schools of General Studies, Lecturers who are employed primarily to perform professional library functions shall not be required to perform guard duty or maintenance duties.

ARTICLE XXVIII WAIVER OF TUITION FEES

28.1 All members of this unit who teach six or more hours per week shall be granted a waiver of tuition fees for undergraduate credit-bearing courses offered by the University in accordance with the procedures for the waiver of undergraduate tuition fees for other groups of employees.

ARTICLE XXIX NO STRIKE PLEDGE

29.1 The Board and the Union agree that disputes which may arise between them shall be settled without resort to strike or lockout and that the requirements of the law in this regard will not be violated. The Board agrees it will not lock out any or all of its employees during the term of this Agreement and the Union agrees on behalf of itself and its membership that there shall be no strikes, slow-downs or interference with the normal operation of the City University during the term of this Agreement.

ARTICLE XXX LEGISLATIVE ACTION

30.1 IT IS AGREED BY AND BETWEEN THE PARTIES THAT ANY PROVISION OF THIS AGREEMENT REQUIRING LEGISLATIVE ACTION TO PERMIT ITS IMPLEMENTATION BY AMENDMENT OF LAW OR BY PROVIDING THE ADDITIONAL FUNDS THEREFOR, SHALL NOT BECOME EFFECTIVE UNTIL THE APPROPRIATE LEGISLATIVE BODY HAS GIVEN APPROVAL.

ARTICLE XXXI DURATION

31.1 This Agreement shall be effective for the period from September 1, 1969 to August 31, 1972.

31.2 The parties agree to commence negotiations for a renewal Agreement no later than six (6) months prior to August 31, 1972.

Dated, New York, BOARD OF HIGHER EDUCATION
September , 1969

By
UNITED FEDERATION OF
COLLEGE TEACHERS, LOCAL 1460,
AFL-CIO

7

4C
GRADUATE COUNCIL, May 24, 1973

COMMITTEE ON ADMISSIONS, STANDARDS, AND FINANCIAL AID

ADJUDICATION OF STUDENT GRIEVANCES REGARDING GRADES

1. Disputes concerning grades will arise rarely in doctoral programs, and most can be resolved without recourse to formal procedures. Discussion with the instructor, or with the executive officer or committee of a program should normally succeed in clarifying misunderstandings. One possible mechanism might be the assignment of the grade "W" in place of a letter grade by the Executive Officer or the Executive Committee with the agreement of the instructor. Nonetheless it is conceivable that cases may arise in which informal procedures fail utterly to satisfy a student grievant, and it is therefore necessary though painful to propose formal procedures where common sense and mutual respect generally prevail.
2. This committee is charged with stating the principles and procedures that should apply if adversary positions should harden. We anticipate two kinds of dispute: an essentially "impersonal or administrative" kind discussed in 3 below; and "personal or academic" disputes alleging incompetence or prejudice of an instructor (4. through 7.).
3. "Administrative" disputes. If instruction should be disrupted or terminated in a course before completion of the work, the mode of grading shall follow a uniform policy not discriminatory against any person. Such a policy shall not be formulated unilaterally by the instructor but shall be the product of joint administration-faculty-student consultation and shall not compromise the educational quality of the degree. Disputes arising out of an instructor's interpretation of such a policy shall be decided by the executive committee of a program with appeal to the academic dean.

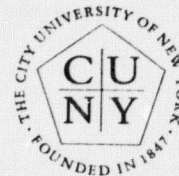
"Academic" disputes

4. Obligations of the instructor: The autonomy of the instructor is not absolute in determining either course content or the standards of performance that should obtain to satisfy the requirements in a given course. Responsibility for these matters is vested collectively in the doctoral faculty as a whole, and more specifically in the faculty of a given program. The instructor is under obligation to his colleagues to assure the articulation of his syllabus within the curriculum of a degree program; the expected level of performance in a given course shall reflect levels of difficulty apposite to the educational objectives of the program, as freely and publicly discussed by students and faculty in CUNY and in the discipline generally. The instructor is likewise under obligation to his students to make clear what is expected of them. Reading assignments, papers, contributions to seminar discussions, experimental work, and the like should be made known early to students so that they are not surprised by unexpected or untimely demands.
5. Obligations of the student: Allegations of prejudice or incompetence against the instructor are extremely grave and complainants who bring them should recognize that they must sustain the burden of proof. Students share with faculty a primary allegiance to the integrity of

their disciplines to which technical breaches of the obligations cited in 4, above are clearly subordinate. Students must be aware that the achievements of doctoral faculty are matters of public record, and that hard-won reputations are not lightly jeopardized by irresponsible conduct. Students will also recognize that experts in the same field frequently disagree, and that independent evaluations of the same material may vary quite widely without imputation of incompetence. Thus the substitution of one expert evaluation for another as a matter of purely academic judgment is almost never justifiable. These principles are not peculiar to the academic world, but are well established in the law applicable to expert testimony generally.

6. Changing grades: It is an established academic principle that an instructor's grades may not be changed without his consent absent a finding of professional impropriety such as incompetence or prejudice. Such a finding must rest upon a hearing of formal charges brought under Art. VII of the Board of Higher Education By-Laws. Any person may bring such charges, but the prima facie determination that there is a case to answer must be made by an administrative officer of the rank of dean or above.
7. Procedure: In the extreme case where informal attempts to mediate a dispute have failed, a bill of particulars shall be submitted by the complainant to the academic dean with the request that steps be initiated for an Art. VII hearing. Appeals may be carried by either party to the President, to the Board of Higher Education, and to the Courts. The grade to be awarded and such other relief as the complainant has been accorded shall be consistent with the decision of the highest tribunal to which appeal has been taken.

The City University of New York
Graduate Center: 33 West 42 Street, New York, N. Y. 10036



Ph.D. Program in Philosophy

January 16, 1970

Miss Anna S. Morpurgo
305 East 72nd Street
New York, N.Y. 10021

Dear Miss Morpurgo:

I find your letter of October 17 among my papers and am afraid I never answered it and that this may have affected your plans. You may still be pleased to know, however, that the Executive Committee is recommending to the Faculty that the restriction to two attempts at any part of the comperehensives be dropped, i.e. that a student (once having had the experience of taking all four at once, which seems to me in itself of educational value) should be allowed to repeat any part as often as he likes, subject of course to a determination by the Executive Committee (if, for example, he failed all four parts) that he should be dropped from the program on overall grounds.

Yours very sincerely,

Peter J. Caws
Executive Officer

PJC:fg

EXHIBIT 11.

BC
sharp if possible

1967-1968 Catalogue

Philosophy

without graduate credit. Additional courses in philosophy may be chosen from the following five areas: 1. history of philosophy; 2. logic and the philosophy of science; 3. metaphysics and epistemology; 4. contemporary problems and schools of philosophy; 5. ethics, aesthetics, social philosophy and philosophy of religion.

At least four seminars, one from each area to be submitted for the Second Examination, are required, including two advanced seminars. Any Seminar course or Special Studies course may be taken a second time with a different topic and credited with the approval of the adviser.

First Examination In order to determine his capability to pursue advanced doctoral studies and research, the student must pass a written qualifying examination, in which he must demonstrate his knowledge of the history of philosophy and competence to analyze a philosophical text or problem.

Second Examination The Second Examination may be taken only after the completion of 45 credits. The Examination will be given in four parts, and will cover the following areas: history of philosophy; logic and philosophy of science; ethics, aesthetics, social philosophy, and philosophy of religion; and at the choice of the student, either contemporary problems and schools of philosophy or metaphysics and epistemology.

Foreign Language The student must demonstrate the ability to read philosophical literature in French and German. With the approval of the student's adviser, Latin, Greek or another language may be substituted for one of the above requirements. The student must meet one language requirement no later than upon the completion of 45 credits. The second language requirement must be met by the time he takes the Second Examination.

Dissertation By the time the student passes the Second Examination, an advisory committee will be appointed for him, including a dissertation adviser who will be a member of the doctoral faculty. The candidate will prepare a dissertation, embodying original research on a subject approved by his advisory committee. Before being certified for the degree, the candidate must successfully defend his dissertation in an oral examination.

EXHIBIT "F"

150

12

May 19, 1972

Miss Anna Selma Morpurgo
P.O. Box 1091
Sage Harbor, New York 11963

Dear Miss Morpurgo:

I regret to inform you that the Evaluations Committee and the Executive Committee decided against the proposal that you be given a special oral examination in the three areas which you have not passed. Both committees after a careful review of the situation decided instead that you be asked to take any two but only two of those three comprehensive examinations in September and that you be expected to pass them. This is to be a condition of remaining within the program.

If you would like to discuss any questions in relation to this, please make an appointment to see me.

Sincerely,

Abraham Edel
Executive Officer

AE/dw

EXHIBIT 13.

THE CITY COLLEGE

OF

THE CITY UNIVERSITY OF NEW YORK

NEW YORK, N. Y. 10031

DEPARTMENT OF PHILOSOPHY

(212) 621-

May 1, 1972

I have been asked to prepare an evaluation of Miss Anselma Vinje-Morpurgo, based on the work she has done with me in a reading course and in preparation for a thesis. By virtue of agreeing to direct her thesis, I unwittingly cast myself in the role of her chief supporter in the program. It was only later that I learned she had not completed her examinations and was unfavorably regarded by many of my colleagues. Nevertheless, given the curious rules that applied at that time, the student had the right to begin thesis work, and so I offered what I could by way of constructive criticism of her thesis proposal. I have since found that the student has definite ability and shows real promise as a scholar. Even now, though, it is difficult to say that my own minority opinion is any more accurate than the excessively negative pronouncements against which it may in part be a reaction. Given my position in this affair,

I often sense that people expect me to hold equally excessive positive views. In actual fact, Anselma seems to me a combination of strengths and weaknesses not very different from most of the graduate students I have known in this program-- and that covers a wide range of abilities. I find it difficult to compare students overall, but I would venture this much: Anselma compares very favorably with others of our students in point of originality, creative drive, enthusiasm for and devotion to the subject, ability to write clearly and vividly, articulateness, and breadth of knowledge, not only of philosophical materials, but of substantive science (particularly neurophysiology) and foreign languages as well. Her deficiencies are, on the other hand, to an unusual degree tied to her strengths. Her breadth militates against concentration in any one area, and in fact her desire to excel prompts her to venture into areas for which she is, by temperament and preparation, least fitted. The necessity to repeatedly prepare for comprehensives is partly to blame for this, as well as for a deterioration in her confidence. I certainly cannot fault her for feeling insecure at this point, but this insecurity has the unfortunate effect of causing her to strain somewhat after originality, for the brilliant aperçu. This lends both her written work and conversation a superficial air of eccentricity that has done much, I think, to damage her standing in the program. Yet, I find that if you are willing to listen, if you are not put off, the air of strangeness generally dissipates when her reasons and arguments are adduced. I have seen work of hers in more congenial subject-areas-- for example, some papers on consciousness-- that are both original and reasonably disciplined. With a firm hand to guide her, she could, in my judgment, do valuable work in this field.

EXHIBIT 14.

I have read her last set of comprehensives, all of which she failed. The problem is quite clear: in her desire to put down everything she knows, which is considerable, she meanders and never really addresses the question asked, except incidentally. None of those who have worked with Anselma doubts that she reads widely, writes easily, or works hard. The real doubts concern her ability to organize what she imbibes and turn it to some philosophical account. She should be told that this is her problem and that these are the doubts of her instructors. She may be able to improve her performance and still these doubts on an oral examination or a written paper on a difficult topic set by the examinations committee. My own sense, on the basis of what she has shown me, is that she deserves some such opportunity. It would also help her, I think, if someone discussed her last set of examinations with her in a friendly but critical spirit. She is aware of the difficulty but perceives it more as a fault of the examinations than as a fault of hers. If she can be made to recognize the importance of addressing the question asked with a minimum of fanfare, then I believe she can overcome her tendencies to meander.

Roger Rosenkrantz

The City University of New York
Graduate Center: 33 West 42 Street, New York, N. Y. 10036



March 24, 1970

Ph.D. Program in Philosophy

Memorandum

To: Students in Philosophy Doctoral Program
From: Abraham Edel, Acting Executive Officer
Subject: Advisors

Name of Student: Miss Anna Selma Morpurgo

The Advisor to whom you have now been definitely assigned is
Professor Roger Rosenkrantz (City College).

Will you please take the initiative in getting in touch with your Advisor.
A copy of this memorandum is being sent to him.

May I repeat what I wrote in a recent memorandum:

It is hoped that the Advisor relation will serve not merely as
a place to which the student can turn for special discussion of
problems that arise on direction of work, or doubtful next steps,
or specific difficulties, but that it will provide the continuity
of long-range guidance as distinct from ad hoc attention.

AE:jm

EXHIBIT 15.

Questions 5 and 6 call for the drawing of a legal conclusion. Without attempting to do that, I will state the facts known to me pertinent to the question of conspiracy to deprive the plaintiff of her civil rights as best as I can recall them.

As a member of the graduate committee on continuing financial aid I can recall discussions with Professors Edel and Koslow on the question what to do about students admitted under the original rules who were not making perceptible progress towards the degree. Those rules allowed a student an unlimited number of attempts to pass the qualifying examinations. We all felt they were an invitation to less able students to waste years of their lives in vain pursuit of a Ph. D.. (The original rules had by then been changed.) While I deplored the original rules as much as anyone, I did maintain the view that, while we could certainly advise the students in question against continuing in the program, we could not retroactively alter the rules as they applied to those students. I have no recollection of this position being challenged.

Ms. Anna Selma Vinje-Morpurgo was a case in point, having failed several of her examinations more than once. (I don't recall whether she had passed any of them.) It is fair to say she was not highly regarded in the program, a consensus from which I appear to have been the lone dissenter (although it is possible that Professor Gaus shared my view at the time). I emphasize this difference of opinion was purely professional. Anna Selma unquestionably had difficulty with logic and with written examinations. (I did read over some of her examinations and concurred in the judgment that they were clear failures; her answers were unusually unresponsive to the questions posed.) However, on the basis of some good work she did in a reading course with me and other philosophical discussions I had with her from time to time, her evident writing ability and great enthusiasm, I regarded her written examinations as an inadequate index of her promise and said so. (People who have special difficulty with written examinations are not uncommon.) I also think Anna Selma has a way of making her views sound more eccentric than they really are, and this undoubtedly puts people off. But beyond this, I do not think the judgments of my colleagues were jaundiced by externalities. They simply had their professional reasons for thinking what they thought (her examinations, papers, and class work) and I had mine (already cited). Nor did either side attempt to draw a one-sided picture. I should remark, finally, upon one last source of Anna Selma's difficulties. I have already mentioned her difficulties with logic. Yet, in the face of this, she proposed a number of thesis topics in very technical areas that require mastery of logic at an advanced level. (She had yet to demonstrate mastery of that subject at an elementary level.) Her persistence in the face of friendly attempts to dissuade her did little to persuade members of the doctoral faculty that she is Ph. D. material.

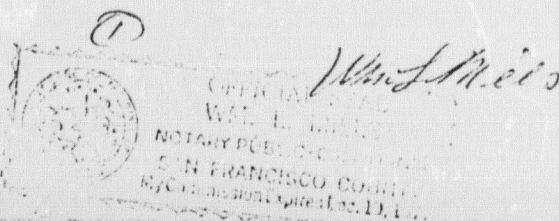
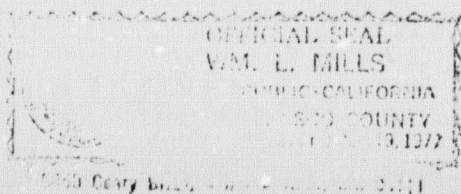
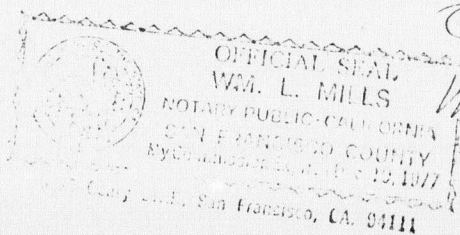


EXHIBIT 16.

It was perhaps in deference to my dissent that Professor Edol, then executive head of the program, proposed the following to Anna Selma: that she be given the opportunity to take oral examinations in two of her chosen specialties at a specified future date with the understanding that satisfactory performance on these be a condition of her remaining in the doctoral program. (I don't recall ever seeing the letter to Anna Selma in which this was proposed, but, on the basis of what she told me I think that was the gist of the proposal.)

Anna Selma sought my advice on this matter. I urged her to accept the proposal, for I thought it fair and in her best interests. She clearly had difficulty with written examinations; I think we both felt an oral examination would give her a far better opportunity of displaying her knowledge of the subject (and, I might add, less opportunity of straying from the point). At the same time I was leaving the program the next fall. I did not think there could be much point in remaining in the program unless she could convince at least one faculty member other than myself that she is indeed doctoral material. I thought oral examinations her very best chance of correcting what I took to be the misperceptions of others and reversing a general downward trend of opinion. At any rate, she did accept the proposal. I regarded it as an acceptable way around the impasse created by the original rules and had then the impressions that all parties to the agreement-- Anna Selma and the doctoral faculty-- were acting in good faith.



TO THE RESPONDENT/WITNESS:

Prof. Roger Rosenkrantz

E.E.O.C. TNY 4-0400

TNY 4-0435, 4-1138

Social Sec. # 079-28- 581

Passport #11840095

Justice File #JSP:G-1:cfm:rdc

DJ 170-51-0

If you are an employee of the federal government under any capacity, including military status present or past and/or diplomatic or other service of an indirect kind, you are urged to contact Mr. Nathaniel L. Garber, Assistant United States Attorney (for the Defendant, William Saxbe), United States Courthouse, Foley Square, New York, NY 10007, (212) 791-1958, for instructions as to what your rights and duties are with respect to filling out and returning this questionnaire.

ANSWER ALL THE QUESTIONS BELOW: (mark questions you cannot answer N/A)

1. Do you refuse to answer any of the questions below pursuant to your rights under the Fifth Amendment of the United States Constitution? ☐ yes ☒ no
2. Do you withhold information called for until such time as the Justice Department can give you adequate safeguards against possible retaliation of an administrative and/or criminal and/or other kind? ☐ yes ☒ no
3. Are you under executive order, under the United States of America, not to reply to some of these questions? ☐ yes ☒ no
4. Are you under executive order, from any source whatever, foreign or domestic, federal, state, or city agency or corporate entity, to delay, impede, engage in deceptive practices or testimony, or otherwise promote the ineffectiveness of a proper investigation of the Plaintiff's grievances against individuals and/or institutions and/or corporations and/or city, state, or federal agencies? ☐ yes ☒ no (attach deposition)
5. Are you a party, whether willingly or unwillingly, to negligent action in a failure to prevent a conspiracy to deprive the Plaintiff of her civil rights and civil liberties? ☐ yes ☐ no (attach deposition) *N/A*
6. Are you a party, whether willingly or unwillingly, to a conspiracy to deprive the Plaintiff of her civil rights and/or her civil liberties? ☐ yes ☐ no (attach deposition) *N/A*

7. Are you discriminating against the Plaintiff for any reason? ☐ yes ☒ no
(attach deposition; if you are a member of the E.E.O.C. or O.C.R. of H.E.W., give the date of filing of the last complaint you are presently investigating and whether this date is later than the date of the Plaintiff's complaint with your agency.)
8. Have you ever been punished, whether directly or indirectly, for refusing to be a party to the delay, impediment, or deceptive practices or testimony in connection with the preparation or promotion of a proper investigation of the Plaintiff's grievances against individuals and/or institutions and/or corporations and/or city, state or federal agencies? ☐ yes ☒ no (attach deposition)
9. Are you being pressured or extorted, or have you ever been thus pressed to engage in discriminatory or retaliatory practices against the Plaintiff for any reason whatever? ☐ yes ☒ no (attach deposition)
10. Have you ever been given favors, bribes, promotions, or other advantages for having performed administrative acts against the Plaintiff, or for assisting in the defense of persons or institutions charged by the Plaintiff to be discriminating and/or retaliating against her for her civil rights and civil liberties activities? ☐ yes ☒ no (attach deposition)
11. Do you know of someone else who should answer in the affirmative to any of the above questions 4 through 10? ☐ yes ☒ no (give name and details)
12. Are you a witness, or do you know someone who has been a witness, to defamatory statements made against the Plaintiff such as that she is mentally ill, emotionally unstable, sexually deviant, financially unreliable, or any other kind of defamation including her presumed personal habits, religion or lack of it, political persuasion, social behavior and/or moral nature? ☐ yes ☒ no (attach deposition)
13. Does your religion compel you to discriminate against persons holding certain political and/or religious views which you believe the Plaintiff holds? ☐ yes ☒ no (explain)

SWORN TO BEFORE ME

on

New York : New York

Subscribed and sworn to before me this

10th day of

March 1975

at

I AFFIRM THAT ALL THE ABOVE IS TRUE:

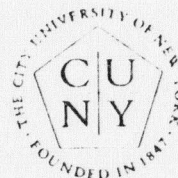
Roger W. Rabinowitz
Respondent/Witness

ADDRESS:

See ① ②

The City University of New York
Graduate Center: 33 West 42 Street, New York, N. Y. 10036

212/700-4246



Ph.D. Program in Philosophy

16 March 1972

TO: ALL CUNY WOMEN FACULTY IN PHILOSOPHY

FROM: Anselm Vinje-Morpargo, student representative on the Faculty Membership & Research Committee, of the CUNY Ph. D. Program in Philosophy. *AVM*

Dear Professor:

At the March 1 meeting of the FM&R Committee, the following action was approved:

"Moved, seconded that Miss Morpargo collect the curriculum vitae of Women City University Faculty members with a view toward examining their qualifications for the doctoral faculty."

I respectfully request an appointment with you to discuss this matter and any course proposals you may have which will suit the specific academic needs of students presently in the program.

I have set up the following tentative schedule for meetings at The Graduate Center, 33 West 42nd Street, Philosophy Office, Room 1601:

Wednesdays	between 6 pm and 9 pm
Fridays	between 3 pm and 9 pm

If you can meet with me at any of these times, please fill in the date and time below:

_____ . If none of these time-slots is convenient for you,

please give me a telephone number and hour at which you can be reached in order to set up another appointment or location for our meeting.

NAME Alia M. Tourdain

COLLEGE Hunter

PHONE (914) 632-7929

TIMES YOU CAN BE REACHED:

REMARKS:

MONDAY. WEDN. FRIDAY:
5. to 7.

360 2427

Please return this form to me in the enclosed reply envelope as soon as possible, in order to expedite your application for admission to the doctoral faculty.

EXHIBIT 17-A

May 17th 1972

Dear Miss Vinje-Morpurgo: (I hope I spelled this right?)

I tried to call you about ten times yesterday; your line was always busy. It is therefore wiser to send the enclosed material by mail.

There are ^{three} remarks to make about this:

1. Professor Landesman's record is dated 1969. (He was promoted in 1970: for some reasons, I could not get mine in 1969; it is dated 1968. I tried to supplement the information the best I could. But of course, this has to be kept in mind.

2. I have collected no information so far on my salary through the years. Do you need it? If yes, please, let me know at your earliest convenience. Of course, it is available through the President's office, but I do not know whether the whole affair should not be kept secret.

3. I received a letter from an Isabelle Krey, asking information similar to the one you asked me. Do you know her, and work with her?

My father passed away recently and for this reason I shall fly to Belgium on May 25th. But, during the summer, I can always be reached at the following address:

19 Arenbergstrasse
A 5020 Salzburg, Austria.

Please, let me know whether you wish to have additional information, and whether you still wish to see me next Tuesday. I do not want you to make the effort of coming to Hunter, unless it is necessary.

Thanking you for your kindness and cooperation, I am, dear Miss Vinje-Morpurgo,

Very sincerely yours,

Alice M. Jourdain

Alice Jourdain (von Hildebrand)
13 Calton Road, Apt. 6 K
New Rochelle 10804, N.Y.
Tel. 914-632-7929

EXHIBIT 17-B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

12 Civ. 101 (LW)
75 Civ. 186 (LW)
E.E.O.C. # TNY 4-0435

AFFIDAVIT OF VOLUNTARY WITNESS

I, Professor Argyrios Vourkas, formerly Summer Session Supervisor at Queensborough Community College of The City University of New York, and still on its faculty as a tenured professor, residing at 108 Shadow Grove Lane, Holbrook, NY 11741, telephone (516) 472-2974,

DO SOLEMNLY SWEAR that the Affidavit and Transcript Sworn to before Carlo Tierno, Notary Public, on the 10th of December 1974, constitutes a truthful transcript of a telephone conversation I had with Ms. Anna Selma Vinje Morpurgo, formerly an adjunct lecturer at Queensborough Community College, on February 6th, 1974, when I voluntarily deposed on the telephone some of the testimony I am prepared to give in federal court relating to her grievances against The City University of New York, and my own adverse experiences resulting from my support of that grievance - in the form of retaliation in employment and continuing harrassment therefrom.

FURTHER, I affirm and reaffirm my willingness to testify on her behalf and to file a verified complaint with the E.E.O.C. in the class action, TNY 4-0434, which she filed on my behalf on March 9, 1974, and which I had indicated to her on repeated occasions I wished her to file for me.

SWORN TO BEFORE ME ON 5th

day of May, 1975

Rose Sperman

ROSE SPERMAN
Notary Public, State of New York
No. 419125-03 Qual. in Queens County
Commission Expires March 30, 1976

Argyrios Vourkas
ARGYRIOS VOURKAS
108 Shadow Grove Lane
Holbrook, NY 11741

EXHIBIT 19.
withheld for oral argument
under Local Rule § 11(d)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
ANNA SELMA VINJE MORPURGO,

Plaintiff,

-v-

PROFESSIONAL STAFF CONGRESS/CUNY, et al.,
Defendants.
-----x

PLAINTIFF'S
ANSWER TO FIRST SET OF VLADECK
INTERROGATORIES

75 Civ. 4913 (EW)

PLAINTIFF, in answer to the Defendants Vladeck first set of Interrogatories dated May 3, 1976, sets forth the following under oath.

STATE OF NEW YORK)

: SS.:

NEW YORK COUNTY)

ANNA SELMA VINJE MORPURGO, being duly sworn,
deposes and says:

(1) All the persons alleged to have knowledge of any relevant facts regarding 75 Civ. 4913 (EW) are the following:

- a. All the persons named as Defendants in 75 Civ. 4913 (EW), whose last known address is given in the amended complaint herein.
- b. All the persons named as Defendants in 75 Civ. 3840 (EW), whose last known address is given in the amended complaint therein.
- c. Some persons whose identifies are as yet uncertain employed by the firm of Vladeck Elias Vladeck & Lewis in the period January 1973 to the present.
- d. Some of the persons whose identifies are as yet uncertain employed as administrative staff or as faculty within the City University of New York in the following departments

1. Board of Higher Education Offices, 535 East 80 Street, N.Y.C.
 2. The Graduate Center administrative offices, 33 W. 42 Street, N.Y.C.
 3. The Graduate Center Philosophy Division, 33 W. 42 Street, N.Y.C.
 4. Queensborough Community College administration, Bayside, N.Y.C.
 5. JCC-Social Science Department, faculty and administration, Bayside.
 6. Hunter College administrative staff, 695 Park Ave., N.Y.C.
 7. Hunter College School of Allied Health Sciences, academic and administrative staff.
 8. Graduate Center Personnel Department, 33 W. 43 Street, N.Y.C.
 9. C.U.N.Y. Internal Security Personnel (address unknown).
- e. Other employees and grievance counselors employed by PSC/CUNY, 25 W. 43 Street, N.Y.C. including Ms. Jean Roane, Mr. Arnold Cantor and other persons whose names are unknown to Plaintiff in advance of return of any of Plaintiff's Interrogatories.
- f. Other employees of the Equal Employment Opportunity Commission whose names are not as yet known by Plaintiff.
- g. Other Government employees in Federal Bureau of Investigation, the State Department, the National Security Agency, and other agencies and persons not known by Plaintiff in advance of Discovery.
- h. Persons who are officers or employees of American Arbitration Association including Milton Rubin and Morris Stone, 140 W. 51 Street, N.Y.C.
- i. Persons employed by the National Institutes of Health, Bethesda, Md., as yet unknown to Plaintiff.
- h. Persons who are volunteers, members, or co-operating associates with the CUNY Women's Coalition, including DSS Alpert and Lelia Melani, whose present address is as yet unknown by Plaintiff.

In advance of discovery, the above is submitted tentatively with the promise of submitting a full list of witnesses whose testimony will be submitted upon return of Plaintiff's Interrogatories and exercise of Plaintiff's right of Discovery.

(2) There are no proposed expert witnesses presently contemplated.

(3) Plaintiff cannot reasonably answer this question due to its vagueness. Plaintiff submits herein a Stipulation pursuant to Rule 29 FRCP for the informal examination of Plaintiff's files and the taking of an oral deposition from Plaintiff at that time.

(4) The only citations contemplated at this time are from the Agreement between UFCT/AFL-CIO and Board of Higher Education C.N.Y., and the Agreement between PSC/CUNY and Board of Higher Education C.N.Y., both of which are available through PSC/CUNY or BHE.

(5) Plaintiff has no knowledge of past criminal records of any of the persons presently contemplated as potential witnesses herein, as enumerated in (1) above.

Plaintiff has no criminal record of any kind. Plaintiff has two speeding violations, one on 3/11/72, another on 11/12/73, for which she paid a fine of \$25 each and accumulated 6 points in an 18 month period, and suffered no probationary period or revocation of license therefrom; these were in Suffolk and Nassau Counties.

(6) All written statements, signed or unsigned, obtained by Plaintiff are contained in the files and records of the following offices:

- a. New York State Supreme Court/New York County, Index No. 10601/74 and 11800/74 (Consolidated), Morpurgo -v- Bd. of Higher Ed., N.Y.C.
- b. NYS Division of Human Rights, 270 Broadway, N.Y.C., Case No. CCF-33181-74, Appeal No. 2315, Morpurgo -v- BHE, et al.,
- c. E.E.O.C./NY District Office, 90 Church Street, N.Y.C., Case Nos. THY 4-0434; THY 4-0435; THY 4-0436; THY 4-0406; THY 4-1138.
- d. American Arbitration Association, 140 W. 51 St., N.Y.C., File No. # 1339-0155-73.
- e. Vinje-Morpurgo file at PSC/CUNY, 25 W. 43 St., N.Y.C.
- f. U.S. Department of Justice, File No. JSP:GFG:cfm:jp
DJ 170-51-0

g. U.S. D.C./S.D.N.Y. (E. Weinfeld) actions: 75 Civ. 186
75 Civ. 187
75 Civ. 3840
75 Civ. 4913

and are further available for inspection by Defendants from Plaintiff's files upon signing of the Stipulation pursuant to Rule 29 FRCP herewith enclosed.

(7) All materials kept by the parties enumerated in (6) above, and in Plaintiff's files, and in the files of Judith P. Vladeck, 1501 Broadway, N.Y.C. contain all written reports made by Plaintiff and are available for Defendants inspection at Plaintiff's offices.

(8) Plaintiff gave voluminous information to grievance counsellors and investigators and other personnel at E.E.O.C., NYS Division, PSC/CUNY, and PHE, as well as forwarded to VLADECK's offices, all of which should be in the files identified in (6) above or at (a) BHE Headquarters, 535 East 80 St., N.Y.C., QCC/CUNY administration, Bayside, N.Y.C., The Graduate Center Philosophy Office Dean's Office, President's Office, Personnel Director's Office, 33 W. 43 St., NY

(9) Plaintiff received a number of returns on an Interrogatory sent under 75 Civ. 187 (E.), all of which, excepting one, denied any knowledge or declined to answer on the basis that the individuals interrogated were not parties to the action; one interrogatory, from Professor Roger Rosenkrantz, wa returned as testimony and is on file at S.D.N.Y., or is available from Plaintiff

(10) Plaintiff has not been served Interrogatories from any other part herein or in any other action herein.

(11) All examinations of Plaintiff under oath are contained in the fil enumerated in (6) and/or (8) above.

(12) Plaintiff has not had any communications with any of the defendan either written or oral with specific respect to the class action under Judge June Greene; Plaintiff spoke to Judith P. Vladeck in May or June 1973 and at other times in Summer, 1973, about her possible blacklisting.

(13) From Fall 1969 through Summer 1972, Plaintiff was employed as an Adjunct Lecturer/part-time, in the Social Science Department of Queensborough Community College/CUNY and was repeatedly denied promotion and hourly increases to which she was fully entitled, as well as other teaching employment within CUNY to which she was fully entitled.

(14) See the attached Deposition.

(15) See the attached Deposition.

(16) Acts of F.B.I. invasion of privacy alleged herein predated any Vladeck involvement; in advance of Discovery it is not alleged that the Vladeck firm took any active role in the invasion of privacy of Plaintiff; it is alleged that the Vladeck firm had knowledge, direct or indirect, of Plaintiff's suffering harrassment from law enforcement or other sources which information it withheld from Plaintiff.

(17) See the attached Deposition.

(18) Plaintiff is only partially bound by the effects of the class action, since she alleges retaliation as a result of exercise of First Amendment rights, in addition to sex discrimination as female. Plaintiff has no copy of the class action complaint, and cannot answer this question more precisely.

(19) See the attached Deposition.

(20) It is alleged that Ms. Vladeck and the Vladeck Firm were negligent in their representation of Coalition members participating in research for the class action, of which Plaintiff is an instance, who suffered retaliation in hiring and education within The City University of New York, as a result of the exercise of their First Amendment rights regarding the class action. The Vladeck Firm failed to take the proper legal measures to discourage C.U.N.Y. retaliation, which it had the power and duty to perform for its clients in the class action. See the attached Deposition for details of these acts of negligence.

(21) It was reported by Anthony DeMealas in an oral communication with Plaintiff that he was consulting with Steven Vladeck and Judith P. Vladeck on whether the Plaintiff's grievance should be withdrawn from Arbitration and take directly to Court, and that the Vladecks declined to take the matter to Court. This occurred in August of 1973. Prior to that time, it was reported by Anthony DeMealas that Steven Vladeck had been one of the attorneys involved with the Step II grievance hearing at the Board of Higher Education offices sometime in Fall 1972; Plaintiff was introduced to a number of attorneys at that Step II hearing and does not remember, and moreover does not know what Steven Vladeck looks like, but was told by a number of persons including Anthony DeMealas, that Steven Vladeck was present at that hearing. The BHE record of the Step II hearing should clarify this matter, which record is yet not available to Plaintiff.

(22) It is so claimed. See the attached Deposition for details.

(23) In advance of Discovery this question cannot be answered except generally; it is alleged that one or more of the defendants in the action herein did conspire with the F.E.O.C. employees to fail to prevent a conspiracy to interfere with Plaintiff's civil rights. See the attached Deposition.

(24) In advance of Discovery it is not claimed that the Vladeck firm had any direct involvement with the actions of Chancellor Robert Kibbee.

(25) In advance of discovery it is alleged that David Newton and Steve Vladeck and/or Anthony DeMealas and Abraham Edel exchanged information regarding Plaintiff's student record at The Graduate Center Philosophy Division which (a) affected proper litigation at Step II of the grievance procedure, (b) contributed to discouraging the taking of proper measures by PSC/CUNY and/or the Vladeck Firm on behalf of the UFCT or the Coalition, to prevent retaliation in education and employment against Plaintiff, (c) resulted in PSC/CUNY (DeMealas) failing to bring sufficient charges against BHE at Arbitration proceedings, (d) resulted in suppressing evidence and witnesses Plaintiff had available in order to corroborate charges of abridgement of academic freedom and of discrimination during Arbitration. See the attached Deposition. ~~See the attached Deposition.~~

(26) Reply to this question is deferred, pending discovery, since giving details might act to slander one of the defendants whose involvement may have been innocent. Plaintiff is willing to reply to this question in Chambers.

(27) Plaintiff does not know whether the VLADECK Defendants participated directly or indirectly through Anthony DeMealas and/or David Newton in coordinating the cover up of Plaintiff's union grievances; however the VLADECK Defendants failed to act properly to protect Plaintiff's legal rights and to preserve evidence in the control of Abraham Edel in Plaintiff's student file, when frequently requested by Plaintiff to do so.

(28) Plaintiff is awaiting copies of the two union contracts and will reply to this question upon receipt of same from POC.

29 is omitted by Defendants.

(30) It is so alleged. See attached Deposition.

(31) See attached Deposition.

(32) Attached hereunder.

(33) See attached Petition for a Protective Order.

(34) See attached Petition for a Protective Order.

(35) Plaintiff, pro se and a nonattorney, cannot answer this question until legal counsel is assigned to her. A partial answer is that the Vladeck firm took part in a conspiracy by failing intentionally to prevent a conspiracy to interfere with Plaintiff's civil rights, in violation of 42 U.S.C. 1986 and 1987; and further failed in its professional duties to Plaintiff as client of a law firm, under whatever statutes in New York State apply to malpractice in law.

(36) See attached Deposition.

(37) See attached Deposition.

(38) Failure of VLADICK Defendants to properly represent Plaintiff resulted in substantial financial and professional losses to Plaintiff.

(39) See attached Deposition.

(40) Plaintiff's voluminous files are open for inspection and copying.

Sworn to before me this

Day of June, 1976.

ANNA DELNA VINJE MORPURGO

Pro Se

Box 1091, Sag Harbor, NY 11963

(516) 725 1414

TO: all counsel herein

*Unconformed
Copy*

UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF NEW YORK

-----x
ANNA SELMA VINJE MORPURGO,
Plaintiff,

-v-

BOARD OF HIGHER EDUCATION NYC, et al.,
UNITED STATES OF AMERICA, et al.,
PROFESSIONAL STAFF CONGRESS/CUNY, et al.,
Defendants.
-----x

NOTICE OF MOTION FOR •
PERMISSION TO REARGUE
75 Civ. 186 (EW)
75 Civ. 3840 (EW)
75 Civ. 4913 (EW)

Date, Time and Place Returnable

Tuesday, December 7, 1976, at 2:15 PM
before the Hon. E. Weinfeld, U.S.D.J.,
at the U.S. Courthouse, S.D.N.Y.,
Foley Square, N.Y.C.

Relief Requested

That a supplementary opinion be filed
to the opinion of Judge Weinfeld
dated November 18, 1976, #45374,
ruling on issues omitted therein, and
clarifying and/or correcting ambigu-
ities and errors of fact therein.

Motion by Plaintiff

Supporting Documents

Affidavit of Anna Selma Vinje Morpurgo,
dated November 26, 1976.

Dated: November 26, 1976

Respectfully submitted by:

Anna Selma Vinje Morpurgo, pro se
Box 1081, Sag Harbor, NY 11963
(516) 725 1414

COPIES TO REMAINING DEFENDANTS
AFFECTED BY THIS MOTION:

Rosemary Carroll, Esq.
Michael C. McCoings, Esq.
Thomas J. Barron (c/o Personnel Director, New York State Division of Human
Rights - the only present address available for this
defendant.)

UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF NEW YORK

-----x
ANNA SELMA VINJE MORPURGO,

Plaintiff,

-v-

BOARD OF HIGHER EDUCATION NYC, et al.,
UNITED STATES OF AMERICA, et al.,
PROFESSIONAL STAFF CONGRESS/CUNY, et al.,
Defendants.

AFFIDAVIT IN SUPPORT OF MOTION
FOR PERMISSION TO REARGUE

75 Civ. 186 (EW)

75 Civ. 3840 (EW)

75 Civ. 4913 (EW)

-----x
STATE OF NEW YORK)

: SS.:

COUNTY OF SUFFOLK)

ANNA SELMA VINJE MORPURGO, being duly sworn, deposes

and says:

(1) I am the Plaintiff in this action, and I make this affidavit in support of my motion for permission to reargue dated November 26, 1976.

(2) In opinion #45374 dated November 18, 1976, the Court has determined to permit trial of the issue as to whether defendants Edel, Newton, Kibbee, Koslow, Myers, Elias, Thornton, Hong, McLaughlin, Proshansky, and Hillerbrand denied me due process.

(3) I respectfully point out to the Court that academic defendants Giardino, Saunders, Held, Caws, Grewe, Rees, Lewis, Schneller, either as members of the CUNY administration, or as members of the Philosophy Executive Committee, or as my designated academic judges in the Philosophy Program, also ought to be tried on this same question.

(4) I further respectfully point out to the Court that since Dean Hillerbrand based his decision to review without due process on Guidelines published by the Board of Education NYC, that Corporate Defendant shares culpability in any charge of denial of due process and ought to be thus included as defendant and tried on this same question.

(5) I further respectfully point out to the Court that a decision in my favor, of which the Court was promptly advised, exists from the Human Rights Appeals Board of New York State which found against the New York State Division of Human Rights on the grounds that it failed to grant me due process in its review of my charge of discrimination.

(6) I respectfully point out to the Court that defendants Arthur W. Stern and Thomas W. Barron of the New York State Division of Human Rights were the persons responsible for the unfavorable determination of the Division which was overturned by the Human Rights Appeals Board, and ought therefore to be tried on the question of whether they personally denied me due process.

(7) I respectfully point out to the Court that defendant Arthur W. Stern (same person) handed down the adverse determination of the EEOC, based in large part upon the findings at the New York State Division, and ought therefore to be tried on the question of whether he personally denied me due process in the review by the EEOC.

(

(3) I further affirm and respectfully seek to remind the Court that there was no action instituted in New York State Supreme Court; the Article 78 Proceedings in Special Term, Part One of the New York County Court was not a suit for damages; it was an appeal of an administrative ruling, as prescribed by New York State Education Law and the federal courts, as the final step in an exhaustion of administrative remedies procedure related to The City University of New York. I could not have sued for damages either in State or Federal Court in advance of such an exhaustion of remedies.

(9) I further affirm and respectfully seek to remind the Court that the Memorandum of Judge Alfred Callahan was handed down without trial and without permitting my exercise of my right of discovery and was based entirely on only two facts that the defendants presented: that the Dean had decided against my appeal; that the New York State Division of Human Rights had found "no probable cause for discrimination." And this latter finding was later vacated by the Human Rights Appeals Board for failure to grant me due process. Thus, if this Court finds that I was likewise denied due process by the CUNY administration, the entire opinion of Judge Callahan violates my Constitutional rights, because arrived at without granting me due process, and hence cannot stand as a res judicata against a direct review by this Court of the question of the existence of discrimination.

(10) I respectfully advise the Court that it has overlooked a petition filed by me on May 10, 1976 under Rule 60(b)(3) and (5) and/or (1) FRCP, concerning the determination of the EEOC, which was based almost entirely upon the investigation and determination of the State Division of Human Rights, which investigation and determination were invalidated by the Human Rights Appeals Board. I respectfully ask that the Court supplement its opinion by ruling on the relief requested in that petition, and its consequences upon the present position of the Court, should it be found that this petition was entirely overlooked in its review.

(11) I respectfully advise the Court that the question of an abridgement of my First Amendment rights as college teacher and student representative researching affirmative action policies were not res judicata in any State Supreme Court proceedings and are therefore not barred from review; the Court makes no mention of this in its opinion and I ask the Court to supplement its opinion with regard to its position on this matter.

(12) I respectfully advise the Court that I continue to be denied admission to other post-graduate programs within CUNY despite the recommendation of the Dean and CUNY faculty, and that this matter was not res judicata in State Supreme Court, and moreover that this further limits my First Amendment rights in employment and education within CUNY; the Court makes no mention of this in its opinion and I respectfully ask the Court to supplement its opinion with regard to this matter.

As a closing remark, I respectfully advise the Court that my claim to be an ambiguous person reflects a moral conviction on my part that each person should be thus considered before the law, which should protect each class equally; if the Court does not find ways to protect the civil rights and liberties of this new "race and sex" of human beings, it will forever be burdened with petty partisan squabbles between races and sexes seeking compensatory "more-than-equal" status before the law. Herein is an opportunity for this Court to clarify the law

Sworn to before me this
26 November 1976

Unconfirmed Copy

ANNA SELMA VINJE MORPURGO

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ANNA SELMA VINGE MORPURGO

Plaintiff

V.

CUNY, et al.

Defendants

CIVIL ACTION No. 75 Civ. 4913

MOTION TO DISMISS PLAINTIFF'S
AMENDED COMPLAINT

Comes now the Defendants, seven individually named employees of the Equal Employment Opportunity Commission, by their counsel and respectfully moves this Court to dismiss the above-entitled case against them pursuant to Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure for the reasons that (1) the Court lacks jurisdiction over the subject matter of this action and (2) the complaint fails to state a claim upon which relief can be granted.

Wherefore, for reasons more fully stated in the supporting memorandum, the Defendants pray that this amended complaint be dismissed.

RALPH MUNOZ
District Counsel
New York District Office

Equal Employment
Opportunity Commission
90 Church Street
Room 1301
New York, New York 10007
(212) 264-7161

DATED: April 21, 1976

Respectfully submitted,

ABNER W. SIBAL
General Counsel

ISSIE L. JENKINS
Deputy General Counsel

CONSTANCE L. DUPRE
Associate General Counsel
Legal Counsel Division

Michael C. McGinns
MICHAEL C. MCGOINGS
Attorney for Defendant

Equal Employment Opportunity
Commission
2401 E Street, N.W.
Washington, D.C. 20506
(202) 634-6460

EXHIBIT 22.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ANNA SELMA VINGE MORPURGO)

Plaintiff)

v.)

CUNY, et al.)

Defendants)

CIVIL ACTION NO. 75 Civ. 4913

MEMORANDUM IN SUPPORT OF
DEFENDANTS EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
EMPLOYEES' MOTION TO DISMISS

STATEMENT OF THE CASE

This is a pro se action by a dissatisfied charging party who is suing individually, among others, seven employees of the Equal Employment Opportunity Commission's (hereinafter the EEOC) New York District Office.

In the Spring of 1970 Plaintiff assumed the position of Adjunct Lecturer in Philosophy in the Social Science Department of Queensborough Community College of the City University of New York (CUNY). On April 13, 1972, Plaintiff was informed by her employer, the Board of Higher Education

of the City of New York, a Defendant in this case, that it's Personnel and Budget Committee, on the basis of unfavorable evaluations, had recommended that she not be reappointed to her teaching position because of "professional incompetence." Plaintiff filed a grievance with her union, the United Federation of College Teachers, later replaced by the Professional Staff Congress/CUNY, also a Defendant in this action. An impartial arbiter dismissed Plaintiff's grievance on August 27, 1973, finding that her reappointment was not arbitrary nor discriminatory and was contractually proper.

On September 28, 1973, Plaintiff filed with the EEOC Charge No. TNY 4-0406, the first of a series of charges alleging violations of Title VII of the Civil Rights Act of 1964, as amended. Other charges filed were numbered

TNY 4-4-73); TNY 4-0435 (filed 10-4-73); TNY 4-0436 (filed 10-4-73); and TNY 4-1138 (filed 4-8-74). Named as Respondents were the Defendant CUNY/Board of Higher Education and Defendant Professional Staff Congress/CUNY. Specifically, Plaintiff alleged in these charges that Respondent employer discriminated against her by harassment in terms and conditions of employment and by terminating her because of her race (unspecified), religion (Unitarian-Universalist), national origin (Italian) and sex (Female), and in retaliation for her having opposed practices made unlawful by Title VII of the Civil Rights Act of 1964, as amended.

Plaintiff also charged that because she promoted non-discrimination and affirmative action among other groups, she was retaliated against by Respondent labor organization because of their friendship with Respondent Employer and because of her race or color (unspecified), religion (Unitarian-Universalist), national origin (Italian) and sex (Female), in

violation of Title VII.

On November 12, 1973, Plaintiff, whose previous complaint with the New York State Human Rights Division had been dismissed, filed a verified complaint with the same agency charging the Board of Higher Education of the City of New York and others with retaliation against her for filing grievance with her union. On January 22, 1974, these charges were also dismissed for lack of jurisdiction.

On April 17, 1974 Plaintiff again filed a verified complaint with the New York State Division of Human Rights charging the Board of Higher Education of the City of New York and others with an unlawful discrimination practice relating to employment because of retaliation. After investigation

the Division of Human Rights issued a determination on July 31, 1974 that there was no probable cause to believe the Respondents engaged in or were engaging in the unlawful discrimination practice complained of.

On August 1, 1975, the District Director of the New York District Office issued a determination with respect to Charge Nos. TNY 4-0406, TNY 4-0435, TNY 4-0436 and TNY 4-1138 that that was not reasonable cause to believe that the Respondents had engaged in unlawful practices in violation of Title VII. This determination included a NOTICE OF RIGHT TO SUE.

Plaintiff filed the present action in the United States District Court of the Southern District of New York on October 6, 1975, pursuant to Title VII of the Civil Rights Act of 1964, as amended, alleging "unfair employment practices due to discrimination for her sex, religion, and race, and charging retaliation for filing grievances with

the EEOC, the New York State Division of Human Rights, the United Federation of College Teachers (replaced by Professional Staff Congress/CUNY) and for assisting in the CUNY Women's Coalition Class Action in preparing investigative material for the EEOC, and for assisting as a student representative in the affirmative action program of the City University of New York." Plaintiff also charged a "conspiracy through bribery and extortion to impede and vitiate a proper investigation of Plaintiff's grievances filed with the union, the EEOC and the New York State Division of Human Rights, in order to prevent public exposure of corruption and infiltration of political and criminal elements in both the union and the Board of Higher Education of the City of New York with concomitant racism, sexism, and religious militance." Plaintiff named 18 Defendants in her complaint. Plaintiff asked the Court to grant her full reinstatement of her adjunct lectureship with back salary at

Queensborough Community College of the City University of New York and punitive damages of one million dollars from all Defendants.

On March 17, 1976, United States District Court Judge Edward Weinfeld granted the Motion to Dismiss the Plaintiff's complaint submitted by the EEOC on behalf of the seven EEOC individual employees, but permitted Plaintiff to amend her complaint within 20 days. Plaintiff timely filed an amended complaint dated April 3, 1976. In addition to the allegations of her original complaint, Plaintiff's amended complaint charges conspiracy to violate her civil rights pursuant to 42 U.S.C. §1985.

The EEOC is representing the seven EEOC District Office employees because their actions taken in order to process Plaintiff's Title VII charges were done in their official capacity as EEOC employees.

ARGUMENT

THE AMENDED COMPLAINT SHOULD BE
DISMISSED FOR LACK OF SUBJECT
MATTER JURISDICTION AND FAILURE
TO STATE A CLAIM UPON WHICH
RELIEF CAN BE GRANTED

A. SOVEREIGN IMMUNITY

Plaintiff has clearly indicated in her fourth cause of action which alleges this Court's authority to review the EEOC's no-cause determination of her charge that her suit is actually against the Commission itself, since no relief could be obtained by naming as Defendants the individual employees of the Commission. Therefore, Plaintiff's amended complaint against the Commission employees should be dismissed for failure to to state a claim upon which relief can be granted and lack of subject matter jurisdiction on the basis of the sovereign immunity of the Commission.

The United States as a sovereign cannot be sued without its consent and a court has no jurisdiction of a suit

against the United States to which it has not consented.

United States v. Sherwood, 312 U.S. 584, 586 (1941). It is well settled that a waiver of sovereign immunity must be specific and explicit, and a waiver cannot be implied.

United States v. King, 395 U.S. 1 (1968); Gnotta v. United States, 415 F.2d 1271 (8th Cir. 1969) cert. denied 397 U.S. 934 (1970); Blaze & Moon, 440 F.2d 1348 (5th Cir. 1971).

Immunity from suit may be waived only by Congressional enactment and there has been no waiver of immunity by Congress as regards the EEOC under the circumstances alleged in this complaint.

Plaintiff's attempt to circumvent this principle of sovereign immunity by naming seven EEOC employees individually should not be allowed. A suit against an officer of the United States is one against the United itself if the decree would operate against the sovereign, Hawaii v. Gordon, 373 U.S. 57, 58 (1963); or if the judgment sought would expend itself on the public treasury or domain, or interfere with the public administration, Land v. Dollar, 330 U.S. 731, 738 (1947); or

if the effect of the judgment would be to restrain the government from acting, or to compel it to act, Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682, 704 (1949), Dugan v. Rank, 372 U.S. 609, 620 (1963). Suits which are nominally against officers and agents of the government who in fact have no individual interest in the controversy and in which the relief is actually against the United States are within the rule of federal immunity from suit. Malone v. Bowdoin, 369 U.S. 643 (1962); Larson v. Domestic & Foreign Commerce Corp., supra.

However, a federal official's conduct will not fall within the protection of the doctrine when (1) the action is beyond the official's statutory powers or (2) even though the action is within the scope of authority, the powers themselves or the manner in which they are exercised are constitutionally void. Dugan at pp. 621-622. Plaintiff has made no allegation that Defendant EEOC employees were acting beyond their statutory powers; nor has she alleged that the powers which they exercised or the manner in which they were exercised are unconstitutional.

The Commission's no reasonable cause determination of Plaintiff's charge of discrimination was clearly a discretionary act of the Commission. Section 706(b) of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000 e-5(b), provides that "If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge...." It is clear from the words of the Act that there is no explicit or mandatory requirement that the EEOC make a finding that there is reasonable cause to believe that the charge is true.

In Larson, supra, at p. 693 the Court said that it was not enough, in a suit against an agency of the sovereign, that the Plaintiff allege an invasion of his legal rights. "Since the sovereign may not be sued, it must also appear that the action to be restrained or directed is not action of the sovereign." Larson, supra, p. 693. In the present action, Plaintiff has failed to show that the EEOC employees

were acting beyond their statutory authority. Thus, the complaint should be dismissed for lack of subject matter jurisdiction on the ground of sovereign immunity.

B. Title VII

Title VII of the Civil Rights Act of 1964, as amended, does not confer upon employees of state and local governments nor employees of private employers the right to bring suit against the EEOC. The only action against the EEOC authorized by Congress under Title VII is one brought under Section 717, 42 U.S.C. §2000 e-(16) (Supp. III, 1973), by an applicant for employment or an employee (or former employee) of EEOC who is aggrieved by unlawful employment practices perpetrated against him or her by the Commission. Accordingly, Plaintiff has no authority to bring suit against the EEOC for relief of the alleged discriminatory practices of her former employer and others. Plaintiff, under Title VII, has only the

right to file suit in the United States District Court pursuant to Section 706 of Title VII against the Respondents named in her charge, after dismissal of the charge by the EEOC.

There is nothing in the Act or its legislative history to suggest that Congress intended that EEOC's determinations on a complaint of discrimination be subjected to judicial scrutiny. On the contrary, the fact that the Act authorizes the aggrieved party to bring a de novo proceeding indicates that it was not the intent of Congress to have EEOC determinations subjected to judicial review. Fekete v. U.S. Steel Corp., 300 F. Supp. 22 (D.Pa. 1969), revs'd on other grounds and reman'd, 424 F. 2d 331 (3rd Cir. 1970); Flowers v. Laborers, Local 6, 2 FEP Cases 235 (D.Ill. 1969), revs'd on other grounds and reman'd, 431 F.2d 205 (7th Cir. 1970). Therefore, Title VII does not confer jurisdiction upon the Court over this matter with respect to any action of the EEOC as inferred by naming seven employees of EEOC in Plaintiff's complaint.

C. 42 U.S.C. §1985

Plaintiff has incorrectly alleged that this Court has jurisdiction to hear this matter under 42 U.S.C. §1985, which gives a cause of action to any person who has been the object of a conspiracy designed to deprive him of the equal protection of the laws. It is submitted that 42 U.S.C. §1985 is not a jurisdictional statute enabling this Court to hear this matter. Nowhere in her amended complaint has Plaintiff stated a proper jurisdictional basis for this Court to hear this case as to the 7 EEOC Defendants.

Furthermore, Plaintiff has failed to show that she is entitled to relief under 42 U.S.C. §1985. Section 1985(1) is clearly inapplicable. Section 1985 (2) is also inapplicable since it is directed towards persons who ".... conspire to obstruct or prevent by force, intimidation, or threat, any party or witness to any court of the United States from attending such court,

or from testifying to any matter pending therein.."; or who "...conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory..." The alleged conspiracy by the EEOC employees is not alleged to have occurred while any matter was pending before a court of the United States, and, in fact, no matter was before a United States Court; nor were the alleged acts of the Defendants concerned with the due course of justice in any State.

It is also pointed out that Section 1986 (2) applies only to a conspiracy to deprive an individual of equal protection. Stambler v. Dillon, 302 F.Supp. (S.D.N.Y. 1969). Plaintiff, in her amended complaint, has failed to allege factual allegations sufficient to support a claim of denial of equal protection. Section 1985, said the Court in Dillon, at p. 1256, not only requires the existence of a conspiracy but acts in furtherance of the conspiracy.

Plaintiff has also failed to set forth a cause of action under Section 1985 (3). To state a valid cause of action under this statutory provision the Supreme Court has said that a complaint must allege that the Defendants did (1) conspire or go in disguise on the highway or on the premises of another, (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws. It must then assert that one or more of the conspirators (3) did, or caused to be done, any act in furtherance of the object of the conspiracy whereby another was (4a) injured in his person or property or (4b) deprived of having and exercising any right or privilege of a citizen of the United States. Griffin v. Breckenridge, 403 U.S. 88, 102-103 (1971). Nowhere in Plaintiff's amended complaint are these requirements satisfied.

Plaintiff's allegations of conspiracy are set forth in conclusory terms only despite her having been granted leave to amend her complaint. Her complaint thus fails to meet the requirements of particularity as set forth in Powell v. Workman's Compensation Bd. of the State of New York, 327 F.2d 131 (2d Cir. 1964) and therefore does not state a claim against the individually named employees of the EEOC upon which relief can be granted. In Powell the Court said at page 137:

"...Plaintiff was bound to do more than state vague and conclusionary allegations respecting the existence of a conspiracy. It was incumbent upon him to allege with some degree of particularity overt acts which defendants engaged in which were reasonably related to the promotion of the claimed conspiracy."

In paragraph 18 of the amended complaint Plaintiff vaguely alleges a conspiracy between the individual employees of the EEOC and "John/James Doe, other federal employees or members of organized crime or friends of theirs to whom they owe allegiance...." Defendant submits that this vague identification

of the persons with whom Defendants are alleged to have conspired fails to adequately notify the Defendants of the nature and substance of the charges against them, as required by Judge Weinfeld's Order permitting Plaintiff to amend her complaint.

Again, in Plaintiff's fifth cause of action, she resorts to vague and conclusory allegations in an effort to show the existence of a conspiracy. Such conclusionary statements do not satisfy the requirements of Powell. The Court in Dillon, supra, at page 1257 stated: "Plaintiffs must do more than label as a conspiracy the actions of the Defendants."

While liberal pleading standards are to be applied to Plaintiff's pro se complaint, Haines v. Kerner, 404 U.S. 519 (1972), a pro se litigant acquires no greater right than any other litigant and a pro se appearance may not be used to deprive a Defendant of the same rights enjoyed by other Defendants. Morgan v. Sylvester, 125 F. Supp. 380, 388 (S.D.N.Y. 1954). In

considering the sufficiency of the allegations of a complaint as in the present action the Court in Morgan, at page 388, quoted from Gibson v. Reynolds, 172 F.2d 95, 99-100 (8th Cir. 1949):

"But when a litigant contends that the factual allegations of his complaint demonstrate that a group of public officers, presumed to have done their duty, were guilty of such wanton, spiteful, malicious prejudice that their acts, ostensibly done in the performance of their statutory duties, were therefore not acts done 'in relation to or connected with' those duties but were in fact vengeful acts committed for the purpose of personally injuring the litigant, the reviewing court must examine those factual allegations with meticulous care to determine whether such a case is stated. For as frequently stated by the courts, it is easy for a disgruntled litigant to state his conclusion, and to even believe, that the officer responsible for the real or imagined injustice was guilty of the rankest kind of malice."

CONCLUSION

For the reasons stated herein, we ask this Court to
dismiss the amended complaint against the seven EEOC employees.

Respectfully submitted,

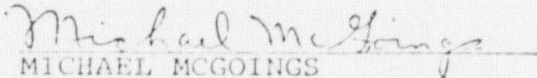
ABNER W. SIBAL
General Counsel

ISSIE L. JENKINS
Deputy General Counsel

CONSTANCE L. DUPREE
Associate General Counsel
Legal Counsel Division

RALPH MUNOZ
District Counsel
New York District Office

Equal Employment Opportunity
Commission
90 Church Street
Room 1301
New York, New York 10007
(212) 264-7161


MICHAEL MCGOINGS
Attorney for Defendant

Equal Employment Opportunity
Commission
2401 E Street, N. W.
Washington, D. C. 20506
(202) 634-6460

TN 711-0406

NAME (Last, first, middle initial) ROSE ALANNAH		DATE OF BIRTH (mm/dd/yyyy) 01/11/1971		SEX ☒ MALE ☐ FEMALE		VETERAN ☐ YES ☐ NO	
MOTHER (Last, first, middle initial) Mrs. Helen Mary Swann and upon my death, I desire and my				AGE 40		TEL. NO. (Give area code) 212 879 0925	
FATHER (Last, first, middle initial) Consuelo Vinj. Murphy (Antonis Smith)				CITY New York			
ADDRESS (Street) Andross Ct. Forest .				STATE/COMMONWEALTH NY 10038			
CITY/STATE/ZIP NY				THE FOLLOWING ORDER OF CALL ALWAYS CONTACT ME			
NAME Dr. Attilio Morgera		RELATIONSHIP father		TEL. NO. (Give area code) 516 725 1114			
ADDRESS (Street) Union Street		CITY AND STATE/COMMONWEALTH Sag Harbor, NY 11963					
STATUS OF EMPLOYMENT							
☒ Check One: ☐ FULL-TIME EMPLOYEE ☐ PART-TIME EMPLOYEE ☐ UNEMPLOYED ☐ WORKING ☐ EMPLOYED HERE							
TYPE OF BUSINESS teacher				DATES OF EMPLOYMENT/ WHEN EMPLOYMENT WAS BOUGHT FROM Jan. 1972 TO present			
POSITION/TITLE adjunct, or better				DEPARTMENT Philosophy			
LOCATION (Number and street) 				CITY 			
COUNTRY (Country) 				STATE/COMMONWEALTH 			
				WORK TEL. NO. (Give area code) 			

Additionally, I request an amendment of my original charge filed by the firm of Vladack, Eliaz, Vladack & Lewis, representatives of the CUNY Women's Coalition Class Action and also representatives of the Professional Staff Congress/CUNY, on the grounds that all these parties are in collusion with the Board of Higher Education in suppressing my grievance due to the fact that as a member of the Coalition and as an elected student representative to the Faculty Membership & Research Committee of the Philosophy Doctoral Program at CUNY, I was promoting affirmative action for women and blacks too diligently, as well as investigating reverse discrimination among militant feminists and religious and ethnic pressure groups, and discrimination by all these militants against blacks. My original grievance in this class action was dated around April 25, 1972, and was not filed by the Vladack office until September 19, 1973, and would not have been filed had I failed to insist on this program through the IECC. See my letter to Mr. Mach...

ENCLOSURE 133

EXHIBIT 23.

of the [redacted] dated March 9, 1974. Since the charge filed by Ms. Watarz is not the charge I sent to her in April 1973, which was duly sworn and notarized on a proper EEOC form, I request that the charge # TNY 4-0406 be amended to read as per the enclosed new affidavit on an EEOC form, and that the charge be docketed as: retaliation for assisting in an EEOC investigation.

I swear or affirm that I have read the above statement and that it is true to the best of my knowledge, information and belief.

SIGNATURE

SOCIAL SECURITY NO.

TOTAL NO. OF

079-28-2581

PAGES

CREDITED TO PERSON TO BE FOR THIS EEOC REPRESENTATIVE

EEOC 11-113

Ex I



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NEW YORK DISTRICT OFFICE
90 CHURCH STREET, ROOM 1301
NEW YORK, NEW YORK 10007
264-7161

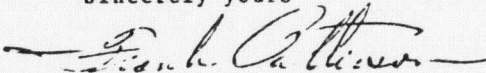
August 8, 1974

Miss Annselm Vinje-Morpurgo
312 East 81st Street
New York, NY 10028

Dear Miss.Vinje-Morpurgo:

We have received your charge of retaliation. This will be filed with your original charge of TNY 4-0406 to be used by the investigator at this time of investigation.

Sincerely yours


Frank Patterson
Supervisor Case Control

no investigator yet! 4/21/75

-This charge has been amended to include Judith P. Vlodeck as co-respondent to retaliation against Plaintiff "for assisting in an EEOC investigation"



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NEW YORK DISTRICT OFFICE
90 CHURCH STREET, ROOM 1301
NEW YORK, NEW YORK 10007

264-7161

Aug 7, 1974

CERTIFIED MAIL NO. 1693874

Ms. Marina Archer - Morpurgo
312 East 81st Street
New York, NY 10028

re: TNY 4-0436

Dear Ms. Morpurgo

The Commission is in the process of undertaking the investigation of charges which have been filed against colleges which are a part of the City Universities of New York. You have filed a charge against one such institution, therefore, in order to initiate the investigation of your charge, I must see you as soon as possible.

Please call me at 264-7361 in order to arrange an interview.

If you reside outside of New York City, or for some other reason you are unable to visit our office, I will make some other arrangements.

It is important that you contact me at your earliest convenience so that I may initiate the investigative process as soon as possible.

If I am out of the office when you telephone please leave a number where you can be reached.

Sincerely,

Maxine Archer

Maxine Archer
Law Intern

EXHIBIT 24.

no investigation yet! 4/16/75

40

VLADECK, ELIAS, VLADECK & LEWIS

COUNSELLORS AT LAW

1501 BROADWAY • NEW YORK, N.Y. 10036

STEFAN C. VLADECK
ELIAS H. ELIAS
JUDITH P. VLADECK
LEWIS F. LEWIS
FREDERICK ENGLISHARD
ROBERT WELLMAN
THOMAS J. KILKENNY

AREA CODE 212
230-4200

IRA S. ROBBINS
COUNSEL

*permanently
general letters informing
her of options have been sent.*

July 10, 1973

Ms. Annselm Vinje-Morpurgo
Box 1091
Sag Harbor, New York 11963

Dear Miss Vinje-Morpurgo:

I am very sorry that I am unable to make any suggestion for finding funds to help you in the difficult period that you describe in your letters to me. Unfortunately, I know of no organization which could be of assistance to you.

I have kept all of the material you sent me, as you requested.

Sincerely yours,

Judith P. Vladeck
Judith P. Vladeck

JPV:AG

CHARGE OF DISCRIMINATION

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's Regional Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. **IT IS THE MOST IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE.**

This form is to be used only to file a charge of discrimination based on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

(PLEASE PRINT OR TYPE)

Case File No. TNY 4-0466

1 Your Name (Mr., Mrs., Miss) DEBORAH MATARZ Esq. on behalf of / Phone Number 239-4290
Street Address 1501 Broadway
City _____ State New York Zip Code 10036

2 WAS I ELIMINATED BECAUSE OF: (Please check one)
Race or Color ☐ Religious Creed ☐ National Origin ☐ Sex ☒ Female

3 Who discriminated against you? Give the name and address of the company, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.

Name The City University of New York - Graduate Center
33 West 42 Street

Street Address 33 West 42 Street
City New York State New York Zip Code 10029

AND (other parties if any) Board of Higher Education, City of New York
Queensboro Community College

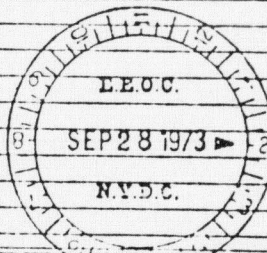
4 Have you filed this charge with a state or local government agency? Yes ☐ When _____ No ☒

5 If your charge is against a company or a union, how many employees or members? Under 25 ☐ Over 25 ☒

6 The most recent date on which this discrimination took place: Month continuing Day _____ Year _____

7 Explain what unfair thing was done to you. How were other persons treated differently? (Use extra sheet if necessary).

while the aggrieved was an employee of City University of New York, she protested the University's discrimination against women; she was terminated due to retaliation in August 1972. The aggrieved is a graduate student in Philosophy at the City University of New York - Graduate Center. She is still being retaliated against due to her protest.



8 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

Date 7/15/73 SEP 1973

Subscribed and sworn to before me this

day of

Equal Simplicity

19 / -

If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you to get the form sworn to.

EXHIBIT 25.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANNA SELMA VINJE MORPURGO,

Plaintiff,

AFFIDAVIT

-v-

75 Civ. 4913 (EW)

PROFESSIONAL STAFF CONGRESS/CUNY, et al.,
Defendants.

STATE OF NEW YORK)

: ss.:

COUNTY OF SUFFOLK)

ANNA SELMA VINJE MORPURGO, being duly sworn, deposes

and says:

(1) I am the Plaintiff in this action, acting pro se, and I make this affidavit in support of my opposition to the E.E.O.C. defendants' motion to dismiss the second amended complaint, and in support of my two petitions for injunctions dated 10 May 1976 herein affixed.

(2) On or about May 3, 1976, I received via Certified Mail a copy of the Order and accompanying Decision dated June 30, 1975 and mailed April 29, 1976, of the State Human Rights Appeal Board vacating the determination of the State Division of Human Rights dated July 31, 1974. (SEE ATTACHMENTS HEREIN UNDER)

(3) On May 6, 1976, I wrote Commissioner Verner Kramarsky requesting a stay in the Division's further proceedings on this matter and that an investigation into official conduct be instituted against Division former employees Arthur W. Stern and Thomas W. Barron, and Mr. Henry M. Spitz, and all others taking part in the initial investigation. (COPY ENCLOSED)

(4) On May 8, 1976, I wrote Mr. J. Stanley Pottinger, acting on behalf of the U.S. Attorney General for the Civil Rights Division of the U.S. Department of Justice, advising him of the matter, and of the suits in this Court, and requesting for the nth time that an investigation into official conduct be instituted. (COPY ENCLOSED)

(5) In the Decision of August 1, 1975 signed by Arthur W. Stern, New York District Director for the Equal Employment Opportunity Commission, the second paragraph states: "substantial weight has been accorded the findings of the New York State Division of Human Rights....et seq." (COPY ATTACHED)

(6) By making requests to Messrs. Kramarsky and Pottinger that investigations into official misconduct be instituted, I am indicating to the Court that I am still pursuing proper channels for official review of complaints against civil service employees and procedures for processing complaints, even though I received a final denial from the Justice Department under 75 Civ. 187(1975)

(7) I have a right to make the claim, at this date, that all reasonable attempts to obtain internal investigations of my grievances and the integrity of officials appointed to review my complaints have been made by me, and that the delays and circumventions of government, state, and municipal agencies are not sincere but act as an obstruction of justice violating 42 U.S.C. Section 1985(2), in that I continue to be aggrieved as a result of these delays by being denied both employment and education, as well as professional advancement.

(8) The Decision of August 1, 1975 by Mr. Stern appears to be ignorant of the decision dated June 30, 1975 rendered by Mr. Phil Levin of the State Human Rights Appeal Board, and I therefore am clearly entitled to an injunction vacating Mr. Stern's Decision under Rule 60(b)(1) F.R.C.P., and I further have a disputable claim for an injunction under Rule 60(b)(5) F.R.C.P. subject to a summary proceeding in this Court upon a review of the entire file kept by the E.E.O.C., and I further have a material claim for an injunction under Rule 60(b)(3) F.R.C.P., upon a trial by jury of the instant action charging a conspiracy to defraud and cover up between employees of the E.E.O.C., such as individuals, and other persons and corporations among the defendants herein, in violation of all subsections of 42 U.S.C. Section 1985 and also 42 U.S.C. Section 1986, and retaliation sections of Title VII.

(9) Sometime in the Fall of 1975 I obtained access to part of the file kept on some of the complaints I instituted with the E.E.O.C. at the New York

District Office. The contents of the file revealed that at least two investigators were successively assigned to my cases, and neither investigator completed his investigation or handed in a recommendation. This fact is in and of itself sufficient grounds for making the following set of allegations:

- a. In the Fall of 1974, Ms. Maxine Archer left her official post before completing the lawful discharge of her office because she was induced to do so by one or more of the other defendants herein, or some intermediary of their acquaintance, or alternately, because she was threatened, intimidated, or otherwise prevented from completing her investigation, and such an act, alleged to ~~be~~ have been prompted by two or more of the other defendants in conspiracy, violated 42 U.S.C. Section 1985(2); further, such an act, alleged to have been known to have been committed by all the other E.E.O.C. employees named as defendants, who had the power to prevent or aid in preventing its commission, violated 42 U.S.C. Section 1986 with respect to all the other E.E.O.C. employees.
- b. In the Spring of 1975, Mr. Al Kersey left his official post before completing his investigation of Plaintiff's grievances because he was either induced or coerced by one or more of the defendants herein, or some intermediary of their acquaintance, in violation of 42 U.S.C. Section 1985(1); further, such an act, alleged to have been known to have been committed.....et cetera.

and so on recursively, at different dates, for all the defendants herein employed by the E.E.O.C. FURTHERMORE,

- c. If either Ms. Archer, Mr. Kersey, Ms. Walker, Mr. Munoz, Mr. Donato, Mr. Holt, or Mr. Stern, conspired with either a fellow employee or John/Jane Doe, federal, state, or municipal employee, or member of organized crime, to conceal

crucial evidence and information that would have influenced the Determination of Mr. Stern dated August 1, 1975, this act violated 42 U.S.C. 1986, with respect to themselves, and 42 U.S.C. 1985(2) with respect to Mr. Stern and the F.E.O.C., as witnesses for Plaintiff in federal court.

and FINALLY,

- d. If any of the defendants herein are simultaneously employed in a secret capacity, so as to be performing counterintelligence operations which in any way contributed to depriving Plaintiff of employment, education, and professional advancement, this act violates 42 U.S.C. Section 1985(3) with respect to that defendant; and if any other defendant, having knowledge of this fact, failed to make this fact known, whether voluntarily or because prevented by his superiors or threatened or otherwise coerced, his/her action violated 42 U.S.C. Section 1986 and the action of the persons coercing him/her violated 42 U.S.C. Section 1985(2).

WHEREFORE, for all the reasons stated above, and the arguments presented in my Memorandum accompanying these papers, and all the exhibits and attachment hereunder, I respectfully ask the Court to (a) grant my two petitions for injunctions, and (b) deny E.E.O.C. defendants' motion to dismiss the second amended complaint.

Sworn to before me this

10th Day of May, 1976

*Unconfirmed
Copy*

ANNA FELMA VINJE MORFIERGO
Box 1091, Sag Harbor, NY 11963
(516) 725 1414

mem. decision

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

ANNA SELMA VINJE MORPURGO, :

Plaintiff, :

-against- :

UNITED STATES OF AMERICA, et al., :

Defendants. :

----- x

EDWARD WEINFELD, D. J.

43652

PRO SE
75 Civ. 3840

MEMORANDUM

FILED
U.S. DISTRICT COURT
DEC 31 2 24 PM '75
S.D. OF N.Y.

Plaintiff, appearing pro se, brings this action for damages and for an "investigation" of her allegations of conspiracy to deprive her of her statutory and constitutional rights against various defendants, including the United States of America, the New York City Board of Higher Education, Princeton University and Massachusetts Institute of Technology, and numerous employees or former employees of the government and of these institutions.

The United States moves to dismiss the complaint for failure to state a claim upon which relief can be granted and the two universities move for a more particular statement as to the charges against them.

MICROFILM

JAN 5 1976

It is difficult to garner any concrete information from plaintiff's complaint, which is essentially a diatribe replete with conclusory allegations of "extortion," "espionage and retaliation," "defamation and slander" and "gross negligence." However, the substance of her claims appears to be that the City University of New York, Princeton University and Massachusetts Institute of Technology have all denied plaintiff admission to their respective doctoral and federally-sponsored research programs and, in consequence, have also denied her access to scholarship, fellowship or other financial aid and employment.

Nowhere in the complaint does plaintiff allege the manner in which her rejection by these institutions was wrongful, either under the Federal Higher Education Act or under the United States Constitution. And the vagueness of plaintiff's allegations against the defendant universities is only surpassed by the incomprehensibility of her claims against the United States. For example, she charges:

"Against the Defendant, United States of America, . . . extortion of United States Citizens who have broken its laws, to retaliate against Plaintiff who has broken

none of its laws, for her civil rights and civil liberties activities; and further charges extortion of non-United States Citizens to engage in espionage and retaliation against Plaintiff, a United States Citizen, in conspiracy with foreign governments to abridge and deny Plaintiff her Constitutional rights; and further charges use of Armed Forces Personnel, not in uniform, to retaliate and spy upon Plaintiff who is a loyal United States Citizen"

This exercise in hyperbole does not notify defendant United States of any cause of action which plaintiff might have against it.

Moreover, plaintiff does not, anywhere in her complaint, recite the interactions among the various unrelated defendants which constitute the purported "conspiracy." As the Court of Appeals has held, to adequately charge a conspiracy, a plaintiff must "allege with at least some degree of particularity overt acts which defendants engaged in which were reasonably related to the promotion of the claimed conspiracy." Powell v. Workmen's Compensation Board, 327 F.2d 131, 137 (2d Cir. 1964).

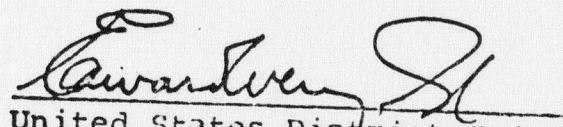
Thus, plaintiff's complaint fails to state a claim upon which relief can be granted and specifically fails to meet the standard set in Powell for allegations of conspiracy.

After scrutinizing plaintiff's complaint and viewing it most liberally, as is appropriate where a plaintiff appears pro se, Haines v. Kerner, 410 U.S. 519 (1972), the Court still is unable to understand the precise nature of plaintiff's claims against any of the numerous defendants. Under these circumstances, requiring a more definite statement would be tantamount to requiring a fully amended complaint.

Furthermore, as the Court indicated in a recent case brought by the same plaintiff, Morougo v. The Board of Higher Education, 75 Civ. 186 (S.D.N.Y., Sept. 5, 1975), "[p]laintiff appears to be an educated person, and it is not unreasonable to require that she comply with the rules and draft a complaint that sets forth 'a short and plain statement of the claim, showing that [she] is entitled to relief.' Fed. R. Civ. P. 8(a)."

The Court grants the motion to dismiss for failure to state a claim as to all defendants, but with leave to the plaintiff to serve an amended complaint in compliance with the rules within twenty days from the date hereof.

Dated: New York, N. Y.
December 31, 1975


United States District Judge

PRO SE 75 CIVIL 4913
PRO SE 75 CIVIL 3840

The complaints in these two actions fail to state claims against the moving defendants. In 75 Civil 4913 plaintiff has named seven employees of the Equal Employment Opportunity Commission as defendants in the caption of her complaint, but no allegation in the body of the complaint refers to them. Presumably she includes them in her blunderbuss charges of

a conspiracy through bribery and extortion
or through indirect bribery and extortion,
to impede and vitiate a proper investigation
of plaintiff's grievances filed with . . .
the E.E.O.C.

Such a vague and conclusory allegation does not notify the defendants of the substance of the charges against them. Further, as this Court held in dismissing plaintiff's original complaint in 75 Civil 3840:

[P]laintiff does not, anywhere in her complaint recite the interactions among the various unrelated defendants which constitute the purported "conspiracy." As the Court of Appeals has held, to adequately charge a conspiracy a plaintiff

must "allege with at least some degree of particularity overt acts which defendants engaged in which were reasonably related to the promotion of the claimed conspiracy." Powell v. Workmen's Compensation Board, 327 F.2d 131, 137 (2d Cir. 1964).

Thus, even viewing plaintiff's complaint liberally in her favor, Haines v. Kerner, 410 U.S. 514 (1972), she again has failed to set forth "a short and plain statement of the claim showing that [she] is entitled to relief." Fed. R. Civ. P. 8(a).

In 75 Civil 3840 plaintiff has served an amended complaint which names the Massachusetts Institute of Technology and Princeton University, among others, as defendants. It appears plaintiff applied for and was denied admission to certain doctoral programs at MIT and Princeton, and she now alleges that those institutions of learning were members of a conspiracy "to deny Plaintiff equal opportunity in education, education-related professional advancement, employment, fellowships, and participation in government-sponsored academic or scientific research programs" and "to

interfere with Plaintiff's civil rights and constitutional rights related to civil-rights issues." She further alleges that her "grievances . . . with the internal investigative mechanisms of . . . MIT . . . and P[rin]ceton] . . . were all conducted without due process and in a manner prejudicial to" her. This is the sum total of the allegations in the amended complaint that refer to MIT or Princeton. Although there is another paragraph intended to recite "overt acts" related to the claimed conspiracy, none of those acts appears to be attributable to MIT or Princeton; moreover, they were supposedly committed by one "JOHN/JANE DOE," whose connection with these two defendants is unspecified.

These vague and conclusory allegations do not indicate the wrong MIT or Princeton supposedly committed or the manner in which they conspired with the other named defendants. Cf. *Powell v. Workmen's Compensation Bd.*, 327 F.2d 131, 137 (2d Cir. 1964). That plaintiff appears pro se does not deprive these defendants of their right to be advised by a proper pleading of the nature of the charge against them.

Accordingly, the motions to dismiss the complaint in 75 Civil 3840 as against MIT and Princeton and in 75 Civil 4913 as against the seven named employees of the EEOC are granted. Plaintiff, if she so desires, will be given one more opportunity in both actions to allege facts that would entitle her to relief against these defendants, failing which the complaints will be dismissed with prejudice. The amended complaint, if any, is to be served within twenty (20) days from this date.

Dated: New York, N. Y.
March 17, 1976

Edward Weinfeld

United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -X

ANNA SELMA VINJE MORPURGO, :

Plaintiff, :

-against- :

75 Civ. 3840 (E.W.)

UNITED STATES OF AMERICA, :

et al., :

Defendants. :

- - - - -X

STATE OF NEW YORK) :

) ss.:

COUNTY OF NEW YORK)

ROBERT G. DESMOND, being duly sworn, deposes and
says:

1. I am a member of the firm of Wien, Lane & Malkin,
attorneys for the defendant Massachusetts Institute of Technology

("MIT"). I make this affidavit in support of MIT's motion, made in open court on May 11, 1976, for an order dismissing the second amended complaint.

2. Annexed hereto is page 90 of MIT's General Catalogue issued in September 1975. This document is submitted for the purpose of showing that MIT has had a policy of granting positions as teaching assistants only to its graduate students. Plaintiff could not qualify for employment as a teaching assistant because she was never accepted as a student at MIT.

Robert G. Desmond
Robert G. Desmond

Sworn to before me this
30th day of June, 1976.

Corrine F. Neenan
Notary Public

CORRINE F. NEENAN
Notary Public, State of New York
No. 31-4518507, Quad. in New York County
Commission Expires March 30, 1978

EXHIBIT 29.

Teaching and Research Assistantships

M.I.T. employs about 500 graduate students each year as part-time or full-time instructors or teaching assistants to assist the faculty in grading undergraduate quizzes, instructing in the classroom and laboratory, and conducting tutorials. They receive salaries which, after taxes, are at least comparable to fellowship stipends, and are awarded tuition scholarships.

After four years of intensive study at the undergraduate level, many students enjoy the new perspectives afforded by a teaching appointment. The departments regard seriously the benefits of a teaching assistantship as a preparation for a career in university teaching, and the Institute offers a prize each year — the Goodwin Medal — for conspicuously effective teaching by a graduate student. The average time taken by doctoral students who have held teaching assistantships is not significantly different from the time taken by doctoral students who have had other forms of support during the same period.

The units for which an instructor or teaching assistant may register as a student are determined by the department in the light of the student's assistantship duties, program of study, and compensation.

Appointments to teaching assistantships are made upon recommendation of the head of a department. A student who wishes to be considered for a teaching appointment should write to the department; such applications from new students will be considered only after acceptance in a graduate program.

Each year about 1,000 graduate students at M.I.T. hold part-time appointments as research assistants. They assist members of the faculty in the research projects that are a major characteristic of the academic life of the Institute and a prime reason for its vitality. It is a policy of the Institute to accept only such projects as will be in keeping with its educational objectives.

Research assistants receive benefits comparable in attractiveness to fellowships. In view of the fact that the duties of a research assistant relate to the thesis work required for a degree, salary (which is applied in part to tuition) is considered the equivalent of a fellowship stipend for tax purposes, and taxes currently are not withheld. (A research assistant's stipend may be found liable to tax in an individual case.) The units for which a research assistant may register are determined by the department in the light of duties and program of study; the stipend is then adjusted.

Most students prize the opportunity a research assistantship gives them to participate as junior colleagues of the faculty in an ongoing research project. The experience enlivens their course work and frequently influences their choice of thesis topic. In many cases a research assistant's thesis work contributes to the project.

Appointments to research assistantships are made by the department head in the same manner as appointments to teaching assistantships.

Loan Funds and College Work-Study

The Institute administers a loan program under which financial assistance is available to all regular graduate students. A student may borrow to support a modest budget for which he or she has insufficient resources. Regular graduate students are expected to have explored all other sources of aid (including employment opportunities and home-state Federally Insured Loan Programs) before requesting loan funds from the Institute. To be considered, a student must submit a budget giving evidence of his or her need. Application should be made to the Student Financial Aid Office, where applications may be obtained.

The Federal Insured Student Loan Program is designed to aid students in meeting the expenses of their education. M.I.T. urges each applicant for aid to apply for loan assistance from that Program, which is administered by participating states. The loans are obtained through local banks and other lending agencies under certain conditions. Prospective students would be well advised to inquire at the earliest possible date about their eligibility for such assistance. The interest rates and repayment provisions are fixed by Federal and state legislation, but are by design more favorable than standard commercial terms.

M.I.T.'s Technology Loan Fund, established in 1931, was the first major loan fund established by any college. Today it is the nation's largest. Since its founding, M.I.T. students have benefited from more than \$10,000,000 in loans from this fund. Awards are made on the basis of financial need and, where possible, are made under the terms and conditions